

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

TITLE 76, Chapter 5, Part 1, drafted by Jackie Rogers

LONG TITLE

General Description:

This bill

Highlighted Provisions:

This bill:

▶

▶

Money Appropriated in this Bill:

None

Other Special Clauses:

None

List of sections affected:

AMENDS:

76-5-101

76-5-102

76-5-102.3

76-5-102.4

76-5-102.5

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76-5-103

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31 76-5-107

32 76-5-107.1

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34 76-5-107.5

35 76-5-108

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40 76-5-112.5

41 76-5-113

42 ENACTS:

43 76-5-109.2

44 76-5-109.3

45 76-5-111.1

46 76-5-111.2

47 76-5-111.3

48

49 REPEALS AND REENACTS:

50

51 RENUMBERS AND AMENDS:

52 ~~[76-5-109.1.]~~ 76-5-114

53 ~~[76-1-601]~~ 76-1-101.5

54 REPEALS:

55

56 Statutory text:

57

58 **[JR NOTE: Section 76-1-601, which contains the title's definitions, will be renumbered**
59 **to Section 76-1-101.5 so that it will appear at the beginning of Title 76:]**

60 **76-1-~~[601]~~101.5. Definitions.**

61 Unless otherwise provided, as used in this title:

62 (1) "Act" means a voluntary bodily movement and includes speech.

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- 63 (2) "Actor" means a person whose criminal responsibility is in issue in a criminal action.
- 64 (3) "Affinity" means a relationship by marriage.
- 65 (4) "Bodily injury" means physical pain, illness, or any impairment of physical condition.
- 66 (5) "Conduct" means an act or omission.
- 67 (6) "Consanguinity" means a relationship by blood to the first or second degree, including
68 an individual's parent, grandparent, sibling, child, aunt, uncle, niece, or nephew.
- 69 (7) "Dangerous weapon" means:
- 70 (a) any item capable of causing death or serious bodily injury; or
- 71 (b) a facsimile or representation of the item, if:
- 72 (i) the actor's use or apparent intended use of the item leads the victim to
73 reasonably believe the item is likely to cause death or serious bodily
74 injury; or
- 75 (ii) the actor represents to the victim verbally or in any other manner that he
76 is in control of such an item.
- 77 (8) "Grievous sexual offense" means:
- 78 (a) rape, Section 76-5-402;
- 79 (b) rape of a child, Section 76-5-402.1;
- 80 (c) object rape, Section 76-5-402.2;
- 81 (d) object rape of a child, Section 76-5-402.3;
- 82 (e) forcible sodomy, Subsection 76-5-403(2);
- 83 (f) sodomy on a child, Section 76-5-403.1;
- 84 (g) aggravated sexual abuse of a child, Subsection 76-5-404.1(4);
- 85 (h) aggravated sexual assault, Section 76-5-405;
- 86 (i) any felony attempt to commit an offense described in Subsections (8)(a)
87 through (h); or
- 88 (j) an offense in another state, territory, or district of the United States that, if
89 committed in Utah, would constitute an offense described in Subsections (8)(a)
90 through (i).
- 91 (9) "Offense" means a violation of any penal statute of this state.
- 92 (10) "Omission" means a failure to act when there is a legal duty to act and the actor is
93 capable of acting.
- 94 (11) "Person" means an individual, public or private corporation, government, partnership,

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or unincorporated association.

(12) "Possess" means to have physical possession of or to exercise dominion or control over tangible property.

(13) "Public entity" means:

- (a) the state, or an agency, bureau, office, department, division, board, commission, institution, laboratory, or other instrumentality of the state;
- (b) a political subdivision of the state, including a county, municipality, interlocal entity, local district, special service district, school district, or school board;
- (c) an agency, bureau, office, department, division, board, commission, institution, laboratory, or other instrumentality of a political subdivision of the state; or
- (d) another entity that:
 - (i) performs a public function; and
 - (ii) is authorized to hold, spend, transfer, disburse, use, or receive public money.

(14) (a) "Public money" or "public funds" means money, funds, or accounts, regardless of the source from which they are derived, that:

- (i) are owned, held, or administered by an entity described in Subsections (13)(a) through (c); or
- (ii) are in the possession of an entity described in Subsection (13)(d)(i) for the purpose of performing a public function.

(b) "Public money" or "public funds" includes money, funds, or accounts described in Subsection (14)(a) after the money, funds, or accounts are transferred by a public entity to an independent contractor of the public entity.

(c) "Public money" or "public funds" remains public money or public funds while in the possession of an independent contractor of a public entity for the purpose of providing a program or service for, or on behalf of, the public entity.

(15) "Public officer" means:

- (a) an elected official of a public entity;
- (b) an individual appointed to, or serving an unexpired term of, an elected official of a public entity;
- (c) a judge of a court of record or not of record, including justice court judges; or
- (d) a member of the Board of Pardons and Parole.

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- 127 (16) (a) "Public servant" means:
- 128 (i) a public officer;
- 129 (ii) an appointed official, employee, consultant, or independent contractor of
- 130 a public entity; or
- 131 (iii) a person hired or paid by a public entity to perform a government
- 132 function.
- 133 (b) Public servant includes a person described in Subsection (16)(a) upon the
- 134 person's election, appointment, contracting, or other selection, regardless of
- 135 whether the person has begun to officially occupy the position of a public
- 136 servant.
- 137 (17) "Serious bodily injury" means bodily injury that creates or causes serious permanent
- 138 disfigurement, protracted loss or impairment of the function of any bodily member or
- 139 organ, or creates a substantial risk of death.
- 140 (18) "Substantial bodily injury" means bodily injury, not amounting to serious bodily injury,
- 141 that creates or causes protracted physical pain, temporary disfigurement, or temporary
- 142 loss or impairment of the function of any bodily member or organ.
- 143 (19) "Writing" or "written" includes any handwriting, typewriting, printing, electronic storage
- 144 or transmission, or any other method of recording information or fixing information in a
- 145 form capable of being preserved.

147 **Chapter 5. Offenses Against the Individual**

149 **76-5-101. "Prisoner" defined.**

150 (1) For purposes of this part , "prisoner" means~~[-any person]~~ an individual who is in

151 custody of a peace officer pursuant to a lawful arrest or who is confined in a jail or other

152 penal institution or a facility used for confinement of delinquent juveniles operated by the

153 Division of Juvenile Justice Services regardless of whether the confinement is legal.

154 (2) Definitions of terms in Section 76-1-101.5 apply to this section.

156 **76-5-102. Assault -- Penalties.**

157 (1) Definitions of terms in Section 76-1-101.5 apply to this section.

158 ~~[(1)]~~ (2) ~~[Assault is]~~ An actor commits assault if the actor :

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(a) ~~[an attempt]~~ attempts, with unlawful force or violence, to ~~[do]~~ inflict bodily injury ~~[to another]~~ on an individual; or

(b) commits an act, ~~[committed]~~ with unlawful force or violence, that :

(i) causes bodily injury to ~~[another]~~ an individual; or

(ii) creates a substantial risk of bodily injury to ~~[another]~~ an individual.

~~[(2)]~~ (3) ~~[Assault]~~ (a) A violation of Subsection (2) is a class B misdemeanor.

~~[(3)]~~ (b) ~~[Assault]~~ Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a class A misdemeanor if:

~~[(a)]~~ (i) the ~~[person]~~ actor causes substantial bodily injury to ~~[another]~~ an individual; or

~~[(b)]~~ (ii) the ~~[victim]~~ individual is pregnant and the ~~[person]~~ actor has knowledge of the pregnancy.

~~[(4)]~~ (4) ~~[It is not a defense against assault, that the accused]~~ The fact that the actor caused serious bodily injury to ~~[another]~~ an individual is not a defense to a violation of this section.

76-5-102.3. Assault or threat of violence against a school employee~~[s]~~.

(1) (a) As used in this section:

(i) "Assault" means an offense under Section 76-5-102.

(ii) "Employee" includes a volunteer.

(iii) "Threat of violence" means an offense under Section 76-5-107.

(b) Definitions of terms in Section 76-1-101.5 apply to this section.

~~[(4)]~~ (2) ~~[Any person who]~~ An actor commits ~~[an]~~ assault or threat of violence against a school employee if:

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- 182 (a) the actor commits assault or~~[as defined in Section 76-5-102, or commits]~~ a
183 threat of violence ~~[as defined in Section 76-5-107,]~~ against an employee of a
184 public or private school~~[:]~~ ;
- 185 (b) ~~[with]~~ the actor has knowledge that the individual is an employee~~[:]~~ ; and
186 ~~[when-]~~ _
- 187 (c) the employee is acting within the scope of ~~[his]~~ the employee's authority as an
188 employee~~[, is guilty of a class A misdemeanor]~~.
- 189 ~~[(2)As used in this section, "employee" includes a volunteer.]~~ _
- 190 (3) A violation of Subsection (2) is a class A misdemeanor.

191

192 **76-5-102.4. Assault against peace officer or a military servicemember in uniform --** 193 **Penalties.**

194 (1) (a) As used in this section:

195 ~~[(a)]~~ (i) "Assault" means~~[the same as that term is defined in-]~~ an offense under Section
196 76-5-102.

197 ~~[(b)]~~ (ii) "Military servicemember in uniform" means:

198 ~~[(i)]~~ (A) a member of any branch of the United States military who is wearing a uniform as
199 authorized by the member's branch of service; or

200 ~~[(ii)]~~ (B) a member of the National Guard serving as provided in Section 39-1-5 or 39-1-9.

201 ~~[(c)]~~ (iii) "Peace officer" means:

202 ~~[(i)]~~ (A) a law enforcement officer certified under Section 53-13-103;

203 ~~[(ii)]~~ (B) a correctional officer under Section 53-13-104;

204 ~~[(iii)]~~ (C) a special function officer under Section 53-13-105; or

205 ~~[(iv)]~~ (D) a federal officer under Section 53-13-106.

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206 ~~[(d)]~~ (iv) "Threat of violence" means ~~[the same as that term is defined in]~~ an offense under
207 Section 76-5-107.

208 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

209 (2) [JR NOTE: I broke these up into two sub-offenses here.] ~~[A person is guilty of a class~~
210 ~~A misdemeanor, except as provided in Subsections (3) and (4), who:]~~ (a) An actor
211 commits assault against a peace officer if:

212 ~~[(a)]~~ (i) the actor commits an assault or threat of violence against a peace officer,
213 with knowledge that the ~~[person]~~ peace officer is a peace officer~~[-]~~ ; and
214 ~~[when]~~ .

215 (ii) at the time of the assault or threat of violence, the peace officer ~~[is]~~ was acting within
216 the scope of authority as a peace officer~~[-or]~~ .

217 (b) An actor commits an assault or threat of violence against a military
218 servicemember in uniform ~~[when]~~ if:

219 (i) the actor commits an assault or threat of violence against a military servicemember in
220 uniform; and

221 (ii) at the time of the assault or threat of violence, ~~[that]~~ the servicemember ~~[is]~~ was on
222 orders and acting within the scope of authority granted to the military servicemember in
223 uniform.

224 (3) ~~[A person who violates]~~ (a) A violation of Subsection (2) is ~~[guilty of a third degree~~
225 ~~felony if the person:]~~ a class A misdemeanor.

226 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third
227 degree felony if the actor:

228 ~~[(a)]~~ (i) has been previously convicted of a class A misdemeanor or a felony violation of this
229 section; or

230 ~~[(b)]~~ (ii) ~~[the person]~~ causes substantial bodily injury.

231 ~~[(4)]~~ (c) ~~[A person who violates]~~ Notwithstanding Subsections (3)(a) and (b), a violation of
232 Subsection (2) is ~~[guilty of]~~ a second degree felony if the ~~[person]~~ actor uses:

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233 ~~[(a)]~~ (i) a dangerous weapon ~~[as defined in Section 76-1-601]~~; or

234 ~~[(b)]~~ (ii) other means or force likely to produce death or serious bodily injury.

235 ~~[(5)]~~ (4) ~~[A person]~~ An actor who violates this section shall serve, in jail or another
236 correctional facility, a minimum of:

237 (a) 90 consecutive days for a second offense; and

238 (b) 180 consecutive days for each subsequent offense.

239 ~~[(6)]~~ (5) The court may suspend the imposition or execution of the sentence required under
240 Subsection ~~[(5)]~~ (4) if the court finds that the interests of justice would be best served by the
241 suspension and the court makes specific findings concerning the disposition on the record.

242 ~~[(7)]~~ (6) This section does not affect or limit any individual's constitutional right to the lawful
243 expression of free speech, the right of assembly, or any other recognized rights secured by
244 the Constitution or laws of Utah or by the Constitution or laws of the United States.

245

246 **76-5-102.5. Assault by prisoner.**

247 (1) (a) As used in this section, "assault" means an offense under Section 76-5-102.

248 (b) Definitions of terms in Sections 76-1-101.5 and 76-5-101 apply to this section.

249 (2) ~~[Any prisoner who commits assault,]~~ An actor commits assault by prisoner if the
250 actor:

251 (a) is a prisoner; and

252 (b) intending to cause bodily injury, commits an assault.

253 (3) A violation of Subsection (2) is ~~[guilty of a felony of the]~~ of a third degree felony.

254

255 **76-5-102.6. Propelling object or substance at a correctional or peace officer --** 256 **Penalties.**

257 (1) (a) As used in this section:

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- 258 (i) "Detained individual" means an individual detained under Section 77-7-15.
- 259 (ii) "Infectious agent" means the same as that term is defined in Section 26-6-2.
- 260 (b) Definitions of terms in Sections 76-1-101.5 and 76-5-101 apply to this section.
- 261 ~~[(1)]~~ (2) An actor commits the offense of propelling an object or substance at a correctional
262 or peace officer if the actor:
- 263 (a) is ~~[It is unlawful for]~~ a prisoner or a detained individual ~~[detained pursuant to~~
264 ~~Section 77-7-15 to]~~ ; and
- 265 (b) ~~[throw]~~ throws or otherwise ~~[propel any]~~ propels an object or substance at a
266 peace officer, a correctional officer, or an employee or volunteer, including a
267 health care provider.
- 268 ~~[(2)]~~ (3) (a) ~~[Except as provided in Subsection (3), a]~~ A violation of Subsection ~~[(1)]~~ (2) is
269 a class A misdemeanor.
- 270 ~~[(3)]~~ (b) ~~[A]~~ Notwithstanding Subsection (3)(a), a violation of Subsection ~~[(1)]~~ (2) is a third
271 degree felony if:
- 272 ~~[(a)]~~ (i) the object or substance causes substantial bodily injury to the peace officer, the
273 correctional officer, or the employee or volunteer, including a health care provider; or
- 274 ~~[(b)]~~ (ii) ~~[(1)]~~ (A) the object or substance is:
- 275 ~~[(A)]~~ (I) blood, urine, semen, or fecal material; [JR NOTE: I added "semen" here because it
276 seems to belong here and its omission was likely an oversight. Steven and Will agree with
277 addition]
- 278 ~~[(B)]~~ (II) an infectious agent ~~[as defined in Section 26-6-2]~~ or a material that carries an
279 infectious agent;
- 280 ~~[(C)]~~ (III) vomit or a material that carries vomit; or
- 281 ~~[(D)]~~ (IV) the ~~[prisoner's or detained individual's]~~ actor's saliva, and the ~~[prisoner or detained~~
282 ~~individual]~~ actor knows ~~[he or she]~~ the actor is infected with HIV, hepatitis B, or hepatitis C;
283 and

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284 ~~[(B)]~~ (B) the object or substance comes into contact with any portion of the officer's ,
285 employee's, volunteer's or health care provider's face, including the eyes or mouth, or comes
286 into contact with any open wound on the officer's , employee's, volunteer's or health care
287 provider's body. [JR NOTE: I added employees and volunteers here because it seemed that
288 this was the intent and this new language clarifies that they are included; Steve and Will
289 agree with addition]

290 (4) If an offense committed under this section amounts to an offense subject to a greater
291 penalty under another provision of state law than under this section, this section does
292 not prohibit prosecution and sentencing for the more serious offense.

293

294 **76-5-102.7. Assault or threat of violence against health care provider ~~[and]~~ or**
295 **emergency medical service worker -- Penalty.**

296 (1) (a) As used in this section:

297 (i) "Assault" means an offense under Section 76-5-102.

298 (ii) "Detained individual" means an individual detained under Section 77-7-15.

299 (iii) "Emergency medical service worker" means an individual licensed under Section
300 26-8a-302.

301 (iv) "Health care provider" means the same as that term is defined in Section 78B-3-403.

302 (v) "Threat of violence" means an offense under Section 76-5-107.

303 (b) Definitions of terms in Sections 76-1-101.5 and 76-5-101 apply to this section.

304 ~~[(1) A person who]~~ (2) An actor commits ~~[an]~~ assault or threat of violence against a health
305 care provider or emergency medical service worker ~~[is guilty of a class A misdemeanor]~~ if:

306 (a) the ~~[person]~~ actor is not a prisoner or a ~~[person detained under Section~~
307 ~~77-7-15]~~ detained individual ;

308 (b) the actor commits an assault or threat of violence;

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309 ~~[(b)]~~ (c) the ~~[person]~~ actor knew that the ~~[victim]~~ individual was a health care provider or
310 emergency medical service worker; and

311 ~~[(c)]~~ (d) the health care provider or emergency medical service worker was
312 performing emergency or life saving duties within the scope of his or her
313 authority at the time of the assault or threat of violence.

314 ~~[(2)A person who violates]~~ (3) (a) A violation of Subsection ~~[(1)]~~ (2) is a class A
315 misdemeanor.

316 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is ~~[guilty of]~~ a
317 third degree felony if the ~~[person]~~ actor:

318 ~~[(a)—]~~ (i) causes substantial bodily injury~~[, as defined in Section 76-1-601]~~; and

319 ~~[(b)]~~ (ii) acts intentionally or knowingly.

320 ~~[(3)As used in this section:~~

321 ~~—— (a) ——"Assault" means the same as that term is defined in Section 76-5-102.~~

322 ~~—— (b) ——"Emergency medical service worker" means a person licensed under Section~~
323 ~~26-8a-302.~~

324 ~~—— (c) ——"Health care provider" means the same as that term is defined in Section~~
325 ~~78B-3-403.~~

326 ~~—— (d) ——"Threat of violence" means the same as that term is defined in Section~~
327 ~~76-5-107.]~~

328

329 **76-5-102.8. Disarming a peace officer -- Penalties.**

330 (1) (a) As used in this section:

331 ~~[(a)—]~~ (i) "Conductive energy device" means a weapon that uses electrical current to disrupt
332 voluntary control of muscles.

333 ~~[(b)—]~~ (ii) "Firearm" ~~[has the same meaning as]~~ means the same as that term is defined in
334 Section 76-10-501.

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335 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

336 (2) An actor ~~[is guilty of an offense under Subsection (3) who]~~ commits disarming a
337 peace officer if the actor intentionally takes or removes, or attempts to take or remove
338 a firearm or a conductive energy device from ~~[the person]~~ an individual or immediate
339 presence of ~~[a person]~~ an individual who the actor knows is a peace officer:

340 (a) without the consent of the peace officer; and

341 (b) while the peace officer is acting within the scope of ~~[his]~~ the peace officer's
342 authority as a peace officer.

343 (3) (a) ~~[Conduct under]~~ A violation of Subsection (2) regarding a firearm is a first
344 degree felony.

345 (b) ~~[Conduct under]~~ A violation of Subsection (2) regarding a conductive energy
346 device is a third degree felony.

347 **76-5-102.9. Propelling a bodily substance or material -- Penalties.**

348 (1) (a) As used in this section : ~~[a listed substance or material is]~~ _

349 (i) "Bodily substance or material" means :

350 ~~[(a)]~~ (A) saliva, blood, urine, semen, or fecal material; [JR NOTE: I added "semen" here
351 because it seems to belong here and its omission was likely an oversight. Steven and Will
352 agree with addition]

353 ~~[(b)]~~ (B) an infectious agent ~~[as defined in Section 26-6-2 of]~~ or [JR NOTE: changed "of" to
354 "or" because likely a typo; Steve and Will agree with change] a material that carries an
355 infectious agent; or

356 ~~[(c)]~~ (C) vomit or a material that carries vomit.

357 (ii) "Infectious agent" means the same as that term is defined in Section 26-6-2.

358 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

359 (2) ~~[Any person who]~~ An actor commits propelling a bodily substance or material if the
360 actor knowingly or intentionally throws or otherwise propels ~~[any]~~ a bodily substance

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or material ~~[listed under Subsection (1)]~~ at another ~~[person is guilty of a class B misdemeanor, except as provided in Subsection (3)]~~ individual.

(3) ~~[A]~~ (a) A violation of Subsection (2) is a class B misdemeanor.

(b) Notwithstanding Subsection (3)(a), a violation of ~~[this section]~~ Subsection (2) is a class A misdemeanor if ~~[the substance or material propelled is listed in Subsection (1), and]~~:

~~[(a)]~~ (i) ~~[if]~~ the bodily substance or material is the ~~[person's]~~ actor's saliva~~;~~ and the ~~[person]~~ actor knows ~~[he or she]~~ the actor is infected with HIV, hepatitis B, or hepatitis C; or

~~[(b)]~~ (ii) the bodily substance or material comes into contact with any portion of the other ~~[person's]~~ individual's face, including the eyes or mouth, or comes into contact with any open wound on the other ~~[person's]~~ individual's body.

(4) If an offense committed under this section amounts to an offense subject to a greater penalty under another provision of state law than under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

76-5-103. Aggravated assault -- Penalties.

(1) (a) As used in this section, "targeting a law enforcement officer" means the same as that term is defined in Section 76-5-202.

(b) Definitions of terms in Section 76-1-101.5 apply to this section.

~~[(1) Aggravated assault is an actor's conduct:~~

~~— (a) — that is:]~~ (2) An actor commits aggravated assault if the actor:

(a) (i) ~~[an attempt]~~ attempts, with unlawful force or violence, to do bodily injury to another;

(ii) makes a threat, accompanied by a show of immediate force or violence, to do bodily injury to another; or

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- 387 (iii) commits an act, committed with unlawful force or violence, that causes
388 bodily injury to another or creates a substantial risk of bodily injury to
389 another; and
- 390 (b) ~~[that]~~ includes in the actor's conduct under Subsection (2)(a) the use of:
- 391 (i) a dangerous weapon ~~[as defined in Section 76-1-601]~~;
- 392 (ii) any act that impedes the breathing or the circulation of blood of another
393 ~~[person]~~ individual by the actor's use of unlawful force or violence that
394 is likely to produce a loss of consciousness by:
- 395 (A) applying pressure to the neck or throat of ~~[a person]~~ an individual
396 ; or
- 397 (B) obstructing the nose, mouth, or airway of ~~[a person]~~ an individual
398 ; or
- 399 (iii) other means or force likely to produce death or serious bodily injury.
- 400 ~~[(2)]~~ (3) (a) ~~[Any act under this section is punishable as]~~ A violation of Subsection (2) is a
401 third degree felony~~[, except that an act under this section is punishable as a second degree~~
402 ~~felony if:]~~ .
- 403 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a second
404 degree felony if:
- 405 (i) the act results in serious bodily injury; or
- 406 (ii) an act under Subsection ~~[(4)]~~ (2) (b)(ii) produces a loss of
407 consciousness.
- 408 ~~[(b)]~~ (c) Notwithstanding Subsections (3)(a) and (b), a violation of Subsection (2) is a first
409 degree felony if the conduct constitutes targeting a law enforcement officer and results in
410 serious bodily injury.
- 411 ~~[Aggravated assault that is a violation of Section 76-5-210, Targeting a law enforcement~~
412 ~~officer, and results in serious bodily injury is a first degree felony.]~~
- 413 **76-5-103.5. Aggravated assault by prisoner.**

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414 (1) (a) As used in this section, "aggravated assault" means an offense under Section
415 76-5-103.

416 (b) Definitions of terms in Sections 76-1-101.5 and 76-5-101 apply to this section.

417 (2) An actor commits aggravated assault by prisoner if the actor:

418 (a) is a prisoner; and

419 (b) commits aggravated assault.

420 ~~[Any prisoner who commits aggravated assault is guilty of:~~

421 ~~(1) — a] (3) (a) A violation of Subsection (2) is a~~ second degree felony ~~[if no serious bodily~~
422 ~~injury was intentionally caused; or] .~~

423 ~~[(2) —] (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is~~ a first degree
424 felony if serious bodily injury was intentionally caused.

425

426 **76-5-104. Consensual altercation.**

427 (1) (a) As used in this section, "ultimate fighting match" means the same as that term
428 is defined in Section 76-9-705.

429 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

430 (2) In any prosecution for criminal homicide under Part 2, Criminal Homicide, or assault,
431 it is no defense to the prosecution that the defendant was a party to any duel, mutual
432 combat, or other consensual altercation if during the course of the duel, combat, or
433 altercation .:

434 (a) any dangerous weapon ~~[as defined in Section 76-1-601]~~ was used .; or ~~[if]~~ .

435 (b) the defendant was engaged in an ultimate fighting match ~~[as defined in Section~~
436 ~~76-9-705]~~.

437

438 **76-5-105. Mayhem.**

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439 (1) Definitions of terms in Section 76-1-101.5 apply to this section.

440 ~~[(1) Every person who]~~ (2) An actor commits mayhem if the actor unlawfully and
441 intentionally :

442 (a) deprives ~~[a human being]~~ an individual of a member of ~~[his]~~ the individual's
443 body~~[-]~~ :

444 (b) ~~[or]~~ disables or renders ~~[it]~~ useless a member of an individual's body; ~~[-, or~~
445 who] _

446 (c) cuts out or disables ~~[the]~~ an individual's tongue ~~[-]~~ ;

447 (d) puts out ~~[an]~~ an individual's eye~~[-]~~ ; or _

448 (e) slits ~~[the]~~ an individual's nose, ear, or lip ~~[-, is guilty of mayhem]~~.

449 ~~[(2) Mayhem is a felony of the second degree.]~~ (3) A violation of Subsection (2) is a second
450 degree felony.

451

452 **76-5-106. Harassment.**

453 (1) Definitions of terms in Section 76-1-101.5 apply to this section.~~[(1) A person is guilty~~
454 ~~of]~~ (2) An actor commits harassment if, with intent to frighten or harass another, ~~[he]~~
455 the actor communicates a written or recorded threat to commit ~~[any]~~ a violent
456 felony.

457 ~~[(2) Harassment]~~ (3) A violation of Subsection (2) is a class B misdemeanor.

458 **76-5-106.5. Stalking -- Definitions -- Injunction -- Penalties -- Duties of law** 459 **enforcement officer.**

460 (1) (a) As used in this section:

461 ~~[(a)]~~ (i) "Course of conduct" means two or more acts directed at or toward a specific
462 ~~[person]~~ individual, including:

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463 [JR NOTE: changed references in section from "person" (which includes entities) to
464 "individual"; Will and Steve agree with change; this policy change is noted for Task Force
465 consideration]

466 [(f)] (A) acts in which the actor follows, monitors, observes, photographs, surveils,
467 threatens, or communicates to or about [a person] an individual, or interferes with [a
468 person's] an individual's property:

469 [(A)] (I) directly, indirectly, or through any third party; and

470 [(B)] (II) by any action, method, device, or means; or

471 [(f)] (B) when the actor engages in any of the following acts or causes someone else to
472 engage in any of these acts:

473 [(A)] (I) approaches or confronts [a person] an individual;

474 [(B)] (II) appears at the [person's] individual's workplace or contacts
475 the [person's] individual's employer or coworkers;

476 [(C)] (III) appears at [a person's] an individual's residence or
477 contacts [a person's] an individual's neighbors, or enters
478 property owned, leased, or occupied by [a person] an
479 individual;

480 [(D)] (IV) sends material by any means to the [person] individual or
481 for the purpose of obtaining or disseminating information
482 about or communicating with the [person] individual to a
483 member of the [person's] individual's family or household,
484 employer, coworker, friend, or associate of the [person]
485 individual;

486 [(E)] (V) places an object on or delivers an object to property
487 owned, leased, or occupied by [a person] an individual, or
488 to the [person's] individual's place of employment with the
489 intent that the object be delivered to the [person] individual
490 ; or

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491 ~~[(f)]~~ (VI) uses a computer, the Internet, text messaging, or any other
492 electronic means to commit an act that is a part of the
493 course of conduct.

494 ~~[(b)]~~ (ii) "Emotional distress" means significant mental or psychological suffering,
495 whether or not medical or other professional treatment or counseling is
496 required.

497 ~~[(c)]~~ (iii) "Immediate family" means a spouse, parent, child, sibling, or any other
498 ~~[person]~~ individual who regularly resides in the household or who
499 regularly resided in the household within the prior six months.

500 ~~[(d)]~~ (iv) "Reasonable person" means a reasonable person in the victim's
501 circumstances. **JR NOTE: I left "victim" here--let me know if Task Force**
502 **wants it to be changed to something else, like "harmed individual"**

503 ~~[(e)]~~ (v) "Stalking" means an offense as described in Subsection (2) ~~[or (3)]~~.

504 ~~[(f)]~~ (vi) "Text messaging" means a communication in the form of electronic text
505 or one or more electronic images sent by the actor from a telephone or
506 computer to another ~~[person's]~~ individual's telephone or computer by
507 addressing the communication to the recipient's telephone number.

508 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

509 (2) ~~[A person is guilty of]~~ An actor commits stalking if the actor ~~[stalking who]~~
510 intentionally or knowingly :

511 (a) engages in a course of conduct directed at a specific ~~[person]~~ individual and knows or
512 should know that the course of conduct would cause a reasonable person:

513 ~~[(a)]~~ (i) to fear for the ~~[person's]~~ individual's own safety or the safety of a third
514 ~~[person]~~ individual; or

515 ~~[(b)]~~ (ii) to suffer other emotional distress~~[:]~~ ; or

516 ~~[(3)]~~ A person is guilty of stalking who intentionally or knowingly (b) violates:

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517 ~~[(a)]~~ (i) a stalking injunction issued under Title 78B, Chapter 7, Part 7, Civil
518 Stalking Injunctions; or

519 ~~[(b)]~~ (ii) a permanent criminal stalking injunction issued under Title 78B, Chapter
520 7, Part 9, Criminal Stalking Injunctions.

521 (3) A violation of Subsection (2) is a class A misdemeanor:

522 ~~[(4) In any prosecution under this section, it is not a defense that the actor:~~

523 ~~—— (a) —— was not given actual notice that the course of conduct was unwanted; or~~

524 ~~—— (b) —— did not intend to cause the victim fear or other emotional distress.]~~

525 ~~[(5) An offense of stalking may be prosecuted under this section in any jurisdiction where~~
526 ~~one or more of the acts that is part of the course of conduct was initiated or caused an~~
527 ~~effect on the victim.]~~

528 ~~[(6) Stalking is a class A misdemeanor:~~

529 ~~—— (a) ——]~~ (i) upon the ~~[offender's]~~ actor's first violation of Subsection (2); or

530 ~~[—— (b)]~~ (ii) if the ~~[offender]~~ actor violated a stalking injunction issued under Title
531 78B, Chapter 7, Part 7, Civil Stalking Injunctions.

532 ~~[(7)]~~ (b) [Stalking] Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a
533 third degree felony if the ~~[offender]~~ actor :

534 ~~[(a)]~~ (i) has been previously convicted of an offense of stalking;

535 ~~[(b)]~~ (ii) has been previously convicted in another jurisdiction of an offense that is
536 substantially similar to the offense of stalking;

537 ~~[(c)]~~ (iii) has been previously convicted of any felony offense in Utah or of any
538 crime in another jurisdiction which if committed in Utah would be a
539 felony, in which the victim of the stalking offense or a member of the
540 victim's immediate family was also a victim of the previous felony
541 offense; {JR NOTE: I left "victim" here--please let me if the Task Force
542 wants it to be changed to something else liked "harmed individual"}

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543 ~~[(d)]~~ (iv) violated a permanent criminal stalking injunction issued under Title 78B,
544 Chapter 7, Part 9, Criminal Stalking Injunctions; or

545 ~~[(e)]~~ (v) has been or is at the time of the offense a cohabitant, as defined in
546 Section 78B-7-102, of the victim. **[same]**

547 ~~[(8)]~~ (c) **[Stalking]** Notwithstanding Subsections (3)(a) and (b), a violation of Subsection
548 (2) is a second degree felony if the ~~[offender]~~ actor :

549 ~~[(a)]~~ (i) used a dangerous weapon ~~[as defined in Section 76-1-601]~~ or used
550 other means or force likely to produce death or serious bodily injury, in
551 the commission of the crime of stalking;

552 ~~[(b)]~~ (ii) has been previously convicted two or more times of the offense of
553 stalking;

554 ~~[(c)]~~ (iii) has been convicted two or more times in another jurisdiction or
555 jurisdictions of offenses that are substantially similar to the offense of
556 stalking;

557 ~~[(d)]~~ (iv) has been convicted two or more times, in any combination, of offenses
558 under Subsection ~~[(7)(a), (b), or (c)]~~ (3)(b)(i), (ii), or (iii) ;

559 ~~[(e)]~~ (v) has been previously convicted two or more times of felony offenses in
560 Utah or of crimes in another jurisdiction or jurisdictions which, if
561 committed in Utah, would be felonies, in which the victim of the stalking
562 was also a victim of the previous felony offenses; or **[same]**

563 ~~[(f)]~~ (vi) has been previously convicted of an offense under Subsection ~~[(7)(d) or~~
564 ~~(e)]~~ (3)(b)(iv) or (v) .

565 (4) In a prosecution under this section, it is not a defense that the actor:

566 (a) was not given actual notice that the course of conduct was unwanted; or

567 (b) did not intend to cause the victim fear or other emotional distress. **[same]**

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568 (5) An offense of stalking may be prosecuted under this section in any jurisdiction where
569 one or more of the acts that is part of the course of conduct was initiated or caused an
570 effect on the victim. [same]

571 ~~[(9)]~~ (6) (a) A permanent criminal stalking injunction limiting the contact between the
572 [defendant] actor and victim may be filed in accordance with Section
573 78B-7-902. [same]

574 (b) This section does not preclude the filing of criminal information for stalking
575 based on the same act which is the basis for the violation of the stalking
576 injunction issued under Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions,
577 or a permanent criminal stalking injunction issued under Title 78B, Chapter 7,
578 Part 9, Criminal Stalking Injunctions.

579 ~~[(10)]~~ (7) (a) A law enforcement officer who responds to an allegation of stalking shall
580 use all reasonable means to protect the victim and prevent further
581 violence, including: [same]

582 (i) taking action that, in the officer's discretion, is reasonably necessary to
583 provide for the safety of the victim and any family or household
584 member; [same]

585 (ii) confiscating the weapon or weapons involved in the alleged stalking;

586 (iii) making arrangements for the victim and any child to obtain emergency
587 housing or shelter; [same]

588 (iv) providing protection while the victim removes essential personal
589 effects; [same]

590 (v) arranging, facilitating, or providing for the victim and any child to obtain
591 medical treatment; and [same]

592 (vi) arranging, facilitating, or providing the victim with immediate and
593 adequate notice of the rights of victims and of the remedies and services
594 available to victims of stalking, in accordance with Subsection ~~[(10)]~~ (7)

595 (b). [same]

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- (b) (i) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this section and Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions. **[same]**
- (ii) The written notice shall also include:
- (A) a statement that the forms needed in order to obtain a stalking injunction are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled; and **[same]**
- (B) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance. **[same]**
- (c) If a weapon is confiscated under this Subsection ~~[(10)]~~ (7), the law enforcement agency shall return the weapon to the individual from whom the weapon is confiscated if a stalking injunction is not issued or once the stalking injunction is terminated.

76-5-107. Threat of violence -- Penalty.

(1) Definitions of terms in Section 76-1-101.5 apply to this section.

~~[(1) A person]~~ (2) An actor commits a threat of violence if the actor:

- (a) ~~[the person]~~ (i) threatens to commit any offense involving bodily injury, death, or substantial property damage~~;~~ ; and
- (ii) acts with intent to place ~~[a person]~~ an individual in fear of imminent serious bodily injury, substantial bodily injury, or death; or
- (b) ~~[the person]~~ makes a threat, accompanied by a show of immediate force or violence, to do bodily injury to ~~[another]~~ an individual.

~~[(2)-]~~ (3) A violation of ~~[this section]~~ Subsection (2) is a class B misdemeanor.

~~[(3)]~~ (4) It is not a defense under this section that the ~~[person]~~ actor did not attempt to or was incapable of carrying out the threat.

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~~[(4)]~~ (5) A threat under this section may be express or implied.

~~[(5) A person]~~ (6) An actor who commits an offense under this section is subject to punishment for that offense, in addition to any other offense committed, including the carrying out of the threatened act.

~~[(6)-]~~ (7) In addition to any other penalty authorized by law, a court shall order ~~[any person]~~ an actor convicted of ~~[any]~~ a violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses and losses incurred in responding to the violation, unless the court states on the record the reasons why the reimbursement would be inappropriate.

76-5-107.1. Threats against schools.

(1) (a) As used in this section~~[-]~~ :

(i) "Hoax weapon of mass destruction" means the same as that term is defined in Section 76-10-401.

(ii) ~~["school"]~~ "School" means a preschool or a public or private elementary or secondary school.

(b) Definitions of terms in Section 76-1-101.5 apply to this section.

(2) An~~[individual]~~ actor is guilty of making a threat against a school if the ~~[individual]~~ actor threatens in person or via electronic means, either with real intent or as an intentional hoax, to commit any offense involving bodily injury, death, or substantial property damage~~[-]~~ and the actor :

(a) threatens the use of a firearm or weapon or hoax weapon of mass destruction~~[-as defined in Section 76-10-401]~~;

(b) acts with intent to:

(i) disrupt the regular schedule of the school or influence or affect the conduct of students, employees, or the general public at the school;

(ii) prevent or interrupt the occupancy of the school or a portion of the school, or a facility or vehicle used by the school; or

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(iii) intimidate or coerce students or employees of the school; or

(c) causes an official or volunteer agency organized to deal with emergencies to take action due to the risk to the school or general public.

(3) (a) A violation of Subsection (2)(a), (b)(i), or (b)(iii) is a class A misdemeanor.

(b) A violation of Subsection (2)(b)(ii) is a class B misdemeanor.

(c) A violation of Subsection (2)(c) is a class C misdemeanor.

(4) Counseling for the minor and the minor's family may be made available through state and local health department programs.

(5) It is not a defense to this section that the [individual] actor did not attempt to carry out or was incapable of carrying out the threat.

(6) (a) In addition to any other penalty authorized by law, a court shall order an [individual] actor convicted of a violation of this section to pay restitution to any federal, state, or local unit of government, or any private business, organization, individual, or entity for expenses and losses incurred in responding to the threat, unless the court states on the record the reasons why the reimbursement would be inappropriate.

(b) Restitution ordered in the case of a minor adjudicated for a violation of this section shall be determined in accordance with Section 80-6-710.

(7) (a) A violation of this section shall be reported to the local law enforcement agency. _

(b) If the [individual] actor alleged to have violated this section is a minor, the minor may be referred to the juvenile court.

76-5-107.3. Threat of terrorism -- Penalty.

(1) (a) As used in this section:

(i) "Hoax weapon of mass destruction" means the same as that term is defined in Section 76-10-401.

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675 (ii) "Weapon of mass destruction" means the same as that term is defined in Section
676 76-10-401.

677 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

678 ~~[(1) A person]~~ (2) An actor commits a threat of terrorism if the ~~[person]~~ actor threatens to
679 commit ~~[any]~~ an offense involving bodily injury, death, or substantial property damage~~;~~
680 and the actor :

681 (a) (i) threatens the use of a weapon of mass destruction~~[, as defined in Section~~
682 ~~76-10-401]~~; or

683 (ii) threatens the use of a hoax weapon of mass destruction~~[, as defined in Section~~
684 ~~76-10-401]~~; or

685 (b) acts with intent to:

686 (i) intimidate or coerce a civilian population or to influence or affect the conduct of a
687 government or a unit of government;

688 (ii) prevent or interrupt the occupation of a building or a portion of the building, a place
689 to which the public has access, or a facility or vehicle of public transportation operated by a
690 common carrier; or

691 (iii) cause an official or volunteer agency organized to deal with emergencies to take
692 action due to the ~~[person's]~~ actor's conduct posing a serious and substantial risk to the
693 general public.

694 ~~[(2)]~~ (3) (a) A violation of Subsection ~~[(1)]~~ (2) (a) or ~~[(1)]~~ (2) (b)(i) is a second degree
695 felony.

696 (b) A violation of Subsection ~~[(1)]~~ (2) (b)(ii) is a third degree felony.

697 (c) A violation of Subsection ~~[(1)]~~ (2) (b)(iii) is a class B misdemeanor.

698 ~~[(3)]~~ (4) It is not a defense under this section that the ~~[person]~~ actor did not attempt
699 to carry out or was incapable of carrying out the threat.

700 ~~[(4)]~~ (5) A threat under this section may be express or implied.

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701 ~~[(5) A person]~~ (6) An actor who commits an offense under this section is subject to
702 punishment for that offense, in addition to any other offense committed, including the
703 carrying out of the threatened act.

704 ~~[(6)]~~ (7) In addition to any other penalty authorized by law, a court shall order ~~[any~~
705 ~~person]~~ an actor convicted of any violation of this section to reimburse any federal, state, or
706 local unit of government, or any private business, organization, individual, or entity for all
707 expenses and losses incurred in responding to the violation, unless the court states on the
708 record the reasons why the reimbursement would be inappropriate.

709 **76-5-107.5. Prohibition of "hazing" -- Definitions -- Penalties.**

710 (1) Definitions of terms in Section 76-1-101.5 apply to this section.

711 ~~[(1) A person is guilty of]~~ (2) An actor commits hazing if ~~[that person]~~ the actor
712 intentionally, knowingly, or recklessly commits an act or causes another to commit an act
713 that:

714 (a) (i) endangers the mental or physical health or safety of ~~[another]~~ an individual ;

715 (ii) involves any brutality of a physical nature such as whipping, beating, branding,
716 calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or
717 exposure to the elements;

718 (iii) involves consumption of any food, alcoholic product, drug, or other substance or
719 any other physical activity that endangers the mental or physical health and safety of an
720 individual; or

721 (iv) involves any activity that would subject the individual to extreme mental stress,
722 such as sleep deprivation, extended isolation from social contact, or conduct that subjects
723 another to extreme embarrassment, shame, or humiliation; and

724 (b) (i) is for the purpose of initiation, admission into, affiliation with, holding office in, or
725 as a condition for continued membership in any organization; or

726 (ii) if the actor knew that the ~~[victim]~~ individual is a member of or candidate for
727 membership with a school team or school organization to which the actor belongs or did
728 belong within the preceding two years.

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729 ~~[(2) It is not a defense to prosecution of hazing that a person under 21, against whom~~
730 ~~the hazing was directed, consented to or acquiesced in the hazing activity.]~~

731 (3) ~~[An actor who hazes another is guilty of a:]~~

732 (a) A violation of Subsection (2) is a class B misdemeanor~~[except as provided in~~
733 ~~Subsection (3)(b), (c), (d), or (e);]~~ .

734 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a class A
735 misdemeanor if the act involves:

736 (i) the operation or other use of a motor vehicle;

737 (ii) the consumption of an alcoholic product as defined in Section 32B-1-102; or

738 (iii) the consumption of a drug or a substance as defined in Section 76-5-113~~;~~ .

739 (c) Notwithstanding Subsections (3)(a) or (b), a violation of Subsection (2) is a third
740 degree felony if the act involves the use of a dangerous weapon ~~[as defined in Section~~
741 ~~76-1-601;]~~ .

742 (d) Notwithstanding Subsections (3)(a), (b), and (c), a violation of Subsection (2) is a
743 third degree felony if the hazing results in serious bodily injury to ~~[a person; or]~~ an individual.
744 {JR NOTE--not clear in existing language whether the injury must be to the individual hazed
745 or to any individual--Task Force may wish to clarify}

746 (e) Notwithstanding Subsections (3)(a), (b), (c), and (d), a violation of Subsection (2)
747 is a second degree felony if hazing under Subsection (3)(d) involves the use of a dangerous
748 weapon ~~[as defined in Section 76-1-601].~~

749 (4) A person who in good faith reports or participates in reporting of an alleged hazing
750 is not subject to any civil or criminal liability regarding the reporting.

751 (5) (a) This section does not apply to military training or other official military activities.

752 (b) Military conduct is governed by Title 39, Chapter 6, Utah Code of Military Justice.

753 (6) (a) A prosecution under this section does not bar a prosecution of the actor for:

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- 754 (i) any other offense for which the actor may be liable as a party for conduct
755 committed by the ~~[person]~~ individual hazed; or
- 756 (ii) any offense, caused in the course of the hazing, that the actor commits against the
757 ~~[person who is]~~ individual hazed.
- 758 (b) Under Subsection (6)(a)(i) ~~[a person]~~ an actor may be separately punished, both
759 for the hazing offense and the conduct committed by the ~~[person]~~ individual hazed.
- 760 (c) Under Subsection (6)(a)(ii) ~~[a person]~~ an actor may not be punished both for
761 hazing and for the other offense, but shall be punished for the offense carrying the greater
762 maximum penalty.
- 763 (7) It is not a defense to prosecution of hazing that an individual under 21 years old, against
764 whom the hazing was directed, consented to or acquiesced in the hazing activity.
- 765 **76-5-108. ~~[-Protective orders]~~ Violation of protective order ~~[restraining abuse of~~
766 ~~another -- Violation]~~.**
- 767 (1) Definitions of terms in Section 76-1-101.5 apply to this section.
- 768 ~~[— (1) Any person]~~ (2) An actor commits violation of protective order if the actor:
- 769 (a) ~~[-who]~~ is the respondent or defendant subject to a protective order, child protective order,
770 ex parte protective order, or ex parte child protective order issued under~~[the following who]~~
771 :
- 772 (i) Title 80, Utah Juvenile Code;
- 773 (ii) Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders;
- 774 (iii) Title 78B, Chapter 7, Part 8, Criminal Protective Orders; or
- 775 (iv) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform
776 Interstate Enforcement of Domestic Violence Protection Orders Act; and
- 777 (b) intentionally or knowingly violates that order after having been properly served or having
778 been present, in person or through court video conferencing, when the order was issued~~[;]~~ .

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779 (3) A violation of Subsection (2) is ~~[guilty of]~~ a class A misdemeanor, except as a greater
780 penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act ~~[:]~~ .

781 ~~[— (a) Title 80, Utah Juvenile Code;]~~

782 ~~[— (b) Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders;]~~

783 ~~[— (c) Title 78B, Chapter 7, Part 8, Criminal Protective Orders; or]~~

784 ~~[— (d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform~~
785 ~~Interstate Enforcement of Domestic Violence Protection Orders Act.]~~

786 ~~[— (2)]~~ (4) Violation of an order ~~[as]~~ described in Subsection ~~[(1)]~~ (2) is a domestic
787 violence offense under Section 77-36-1 and subject to increased penalties in accordance
788 with Section 77-36-1.1.

789 **76-5-109. Child abuse ~~[--Child abandonment]~~.** [JR NOTE: This statute was broken up
790 into three separate offenses : child abuse, aggravated child abuse, and child abandonment;
791 Steve and Will approve of action]

792 (1) (a) As used in this section:

793 ~~[(a)]~~ (i) "Child" means ~~[a human being who is under]~~ an individual who is younger
794 than 18 years ~~[of age]~~ old .

795 ~~[(b) (i) "Child abandonment" means that a parent or legal guardian of a child:~~

796 ~~— (A) intentionally ceases to maintain physical custody of the child;~~

797 ~~— (B) intentionally fails to make reasonable arrangements for the safety, care, and~~
798 ~~physical custody of the child; and~~

799 ~~— (C) (I) intentionally fails to provide the child with food, shelter, or clothing;~~

800 ~~— (II) manifests an intent to permanently not resume physical custody of the child; or~~

801 ~~— (III) for a period of at least 30 days:~~

802 ~~— (Aa) intentionally fails to resume physical custody of the child; and~~

803 ~~— (Bb) fails to manifest a genuine intent to resume physical custody of the child.~~

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804 ~~—— (ii) "Child abandonment" does not include:~~

805 ~~—— (A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802;~~
806 ~~or~~

807 ~~—— (B) giving legal consent to a court order for termination of parental rights:~~

808 ~~—— (I) in a legal adoption proceeding; or~~

809 ~~—— (II) in a case where a petition for the termination of parental rights, or the termination~~
810 ~~of a guardianship, has been filed.]~~

811 ~~[—— (c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in~~
812 ~~Section 76-5-109.1.]~~ {JR NOTE: other sections will need updating as result of this deletion}

813 ~~[(d) "Enterprise" is as defined in Section 76-10-1602.]~~

814 ~~[(e)]~~ (ii) "Physical injury" means an injury to or condition of a child which impairs the
815 physical condition of the child, including:

816 (i) (A) a bruise or other contusion of the skin;

817 (ii) (B) a minor laceration or abrasion;

818 (iii) (C) failure to thrive or malnutrition; or

819 (iv) (D) any other condition which imperils the child's health or welfare and [which]
820 that is not a serious physical injury ~~[as defined in Subsection (1)(f)]~~.

821 (f) (iii) ~~[(i)]~~ (A) "Serious physical injury" means any physical injury or set of injuries
822 that:

823 ~~[(A)]~~ (I) seriously impairs the child's health;

824 ~~[(B)]~~ (II) involves physical torture;

825 ~~[(C)]~~ (III) causes serious emotional harm to the child; or

826 ~~[(D)]~~ (IV) involves a substantial risk of death to the child.

827 ~~[(ii)]~~ (B) "Serious physical injury" includes:

828 ~~[(A)]~~ (I) fracture of any bone or bones;

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829 ~~[(B)]~~ (II) intracranial bleeding, swelling or contusion of the brain, whether caused by
830 blows, shaking, or causing the child's head to impact with an object or surface;

831 ~~[(C)]~~ (III) any burn, including burns inflicted by hot water, or those caused by placing
832 a hot object upon the skin or body of the child;

833 ~~[(D)]~~ (IV) any injury caused by use of a dangerous weapon ~~[as defined in Section~~
834 ~~76-1-604]~~;

835 ~~[(E)]~~ (V) any combination of two or more physical injuries inflicted by the same
836 person, either at the same time or on different occasions;

837 ~~[(F)]~~ (VI) any damage to internal organs of the body;

838 ~~[(G)]~~ (VII) any conduct toward a child that results in severe emotional harm, severe
839 developmental delay or intellectual disability, or severe impairment of the child's ability to
840 function;

841 ~~[(H)]~~ (VIII) any injury that creates a permanent disfigurement or protracted loss or
842 impairment of the function of a bodily member, limb, or organ;

843 ~~[(I)]~~ (IX) any impediment of the breathing or the circulation of blood by application of
844 pressure to the neck, throat, or chest, or by the obstruction of the nose or mouth, that is likely
845 to produce a loss of consciousness;

846 ~~[(J)]~~ (X) any conduct that results in starvation or failure to thrive or malnutrition that
847 jeopardizes the child's life; or

848 ~~[(K)]~~ (XI) unconsciousness caused by the unlawful infliction of a brain injury or
849 unlawfully causing any deprivation of oxygen to the brain.

850 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

851 ~~[— (2) Any person who inflicts upon a child serious physical injury or, having the care or~~
852 ~~custody of such child, causes or permits another to inflict serious physical injury upon a child~~
853 ~~is guilty of an offense as follows:~~

854 ~~— (a) if done intentionally or knowingly, the offense is a felony of the second degree;~~

855 ~~— (b) if done recklessly, the offense is a felony of the third degree; or~~

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856 ~~_____ (c) if done with criminal negligence, the offense is a class A misdemeanor.]~~

857 ~~[_____ (3) Any person who]~~ (2) An actor commits child abuse if the actor:

858 (a) inflicts upon a child physical injury ; or ~~[;]~~ .

859 (b) having the care or custody of such child, causes or permits another to inflict physical

860 injury upon a child ~~[is guilty of an offense as follows:]~~ .

861 (3) (a) A violation of Subsection (2) is a class A misdemeanor if done intentionally

862 or knowingly ~~[, the offense is a class A misdemeanor;]~~ .

863 (b) A violation of Subsection (2) is a class B misdemeanor if done recklessly ~~[, the~~

864 ~~offense is a class B misdemeanor; or]~~ .

865 (c) A violation of Subsection (2) is a class C misdemeanor if done with criminal

866 negligence ~~[, the offense is a class C misdemeanor].~~

867 ~~[(4) A person who commits child abandonment, or encourages or causes another to~~

868 ~~commit child abandonment, or an enterprise that encourages, commands, or causes another~~

869 ~~to commit child abandonment, is:~~

870 ~~_____ (a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or~~

871 ~~_____ (b) guilty of a felony of the second degree, if, as a result of the child abandonment:~~

872 ~~_____ (i) the child suffers a serious physical injury; or~~

873 ~~_____ (ii) the person or enterprise receives, directly or indirectly, any benefit.~~

874 ~~_____ (5) (a) In addition to the penalty described in Subsection (4)(b), the court may order~~

875 ~~the person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating~~

876 ~~and prosecuting the offense and the costs of securing any forfeiture provided for under~~

877 ~~Subsection (5)(b).]~~

878 ~~[(b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to~~

879 ~~criminal or civil forfeiture pursuant to Title 24, Forfeiture and Disposition of Property Act.]~~

880 ~~[_____ (6)]~~ (4) A parent or legal guardian who provides a child with treatment by spiritual

881 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and

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882 practices of an established church or religious denomination of which the parent or legal
883 guardian is a member or adherent ~~[shall]~~ may not, for that reason alone, be considered to
884 have committed an offense under this section.

885 ~~[(7)]~~ (5) A parent or guardian of a child does not violate this section by selecting a
886 treatment option for ~~[the]~~ a medical condition of the child, if the treatment option is one that
887 a reasonable parent or guardian would believe to be in the best interest of the child.

888 ~~[(8) A person]~~ (6) An actor is not guilty of an offense under this section for conduct
889 that constitutes:

890 (a) reasonable discipline or management of a child, including withholding privileges;

891 (b) conduct described in Section 76-2-401; or

892 (c) the use of reasonable and necessary physical restraint or force on a child:

893 (i) in self-defense;

894 (ii) in defense of others;

895 (iii) to protect the child; or

896 (iv) to remove a weapon in the possession of a child for any of the reasons described
897 in Subsections ~~[(8)]~~ (6) (c)(i) through (iii).

898 **76-5-109.2. Aggravated child abuse.**

899 (1) (a) As used in this section:

900 (i) "Child" means the same as that term is defined in Section 76-5-109.

901 (ii) "Serious physical injury" means the same as that term is defined in Section 76-5-109.

902 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

903 (2) An actor commits aggravated child abuse if the actor:

904 (a) inflicts upon a child serious physical injury; or

905 (b) having the care or custody of such child, causes or permits another to inflict serious
906 physical injury upon a child.

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907 (3) (a) A violation of Subsection (2) is a second degree felony if done intentionally or
908 knowingly.

909 (b) A violation of Subsection (2) is a third degree felony if done recklessly.

910 (c) A violation of Subsection (2) is a class A misdemeanor if done with criminal negligence.

911 (4) A parent or legal guardian who provides a child with treatment by spiritual means alone
912 through prayer, in lieu of medical treatment, in accordance with the tenets and practices of
913 an established church or religious denomination of which the parent or legal guardian is a
914 member or adherent may not, for that reason alone, be considered to have committed an
915 offense under this section.

916 (5) A parent or guardian of a child does not violate this section by selecting a treatment
917 option for the medical condition of the child, if the treatment option is one that a reasonable
918 parent or guardian would believe to be in the best interest of the child.

919 (6) An actor is not guilty of an offense under this section for conduct that constitutes:

920 (a) reasonable discipline or management of a child, including withholding privileges; [JR
921 NOTE: unless the Task Force directs otherwise, Will and I suggest that this defense be
922 removed from this newly created section due to fact that Utah appellate courts have held that
923 "reasonable discipline" does not apply when serious physical injury results]

924 (b) conduct described in Section 76-2-401; or

925 (c) the use of reasonable and necessary physical restraint or force on a child:

926 (i) in self-defense;

927 (ii) in defense of others;

928 (iii) to protect the child; or

929 (iv) to remove a weapon in the possession of a child for any of the reasons described in
930 Subsections (6)(c)(i) through (iii).

931 **76-5-109.3. Child abandonment.**

932 (1) (a) As used in this section:

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- 933 (i) "Child" means the same as that term is defined in Section 76-5-109.
- 934 (ii) (A) "Child abandonment" means that a parent or legal guardian of a child intentionally
935 ceases to maintain physical custody of the child, intentionally fails to make reasonable
936 arrangements for the safety, care, and physical custody of the child, and the parent or legal
937 guardian:
- 938 (I) intentionally fails to provide the child with food, shelter, or clothing;
- 939 (II) manifests an intent to permanently not resume physical custody of the child; or
- 940 (III) for a period of at least 30 days, intentionally fails to resume physical custody of the child
941 and fails to manifest a genuine intent to resume physical custody of the child.
- 942 (B) "Child abandonment" does not include:
- 943 (I) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or
- 944 (II) giving legal consent to a court order for termination of parental rights in a legal adoption
945 proceeding or in a case in which a petition for the termination of parental rights, or the
946 termination of a guardianship, has been filed.
- 947 (iii) "Enterprise" means the same as that term is defined in Section 76-10-1602.
- 948 (iv) "Serious physical injury" means the same as that term is defined in Section 76-5-109.
- 949 (b) Definitions of terms in Section 76-1-101.5 apply to this section.
- 950 (2) (a) An actor commits child abandonment if the actor commits child abandonment, or
951 encourages or causes another to commit child abandonment.
- 952 (b) An enterprise commits child abandonment if the enterprise encourages, commands, or
953 causes another to commit child abandonment.
- 954 (3) (a) A violation of Subsection (2) is a third degree felony.
- 955 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a second degree
956 felony if, as a result of the child abandonment:
- 957 (i) the child suffers a serious physical injury; or
- 958 (ii) the actor or enterprise receives, directly or indirectly, any benefit.

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959 (4) (a) In addition to the penalty described in Subsection (3)(b), the court may order the
960 actor or enterprise described in Subsection (3)(b)(ii) to pay the costs of investigating and
961 prosecuting the offense and the costs of securing any forfeiture provided for under
962 Subsection (4)(b).

963 (b) Any tangible or pecuniary benefit received under Subsection (3)(b)(ii) is subject to
964 criminal or civil forfeiture pursuant to Title 24, Forfeiture and Disposition of Property Act.

965 (5) A parent or legal guardian who provides a child with treatment by spiritual means alone
966 through prayer, in lieu of medical treatment, in accordance with the tenets and practices of
967 an established church or religious denomination of which the parent or legal guardian is a
968 member or adherent may not, for that reason alone, be considered to have committed an
969 offense under this section.

970 (6) A parent or guardian of a child does not violate this section by selecting a treatment
971 option for a medical condition of the child, if the treatment option is one that a reasonable
972 parent or guardian would believe to be in the best interest of the child. [JR NOTE: unless the
973 Task Force directs otherwise, Will and I suggest that this Subsection (6) be removed from
974 this newly created section due to fact that this defense does not apply to child abandonment]

975 (7) An actor is not guilty of an offense under this section for conduct that constitutes:

976 (a) reasonable discipline or management of a child, including withholding privileges;

977 (b) conduct described in Section 76-2-401; or

978 (c) the use of reasonable and necessary physical restraint or force on a child:

979 (i) in self-defense;

980 (ii) in defense of others;

981 (iii) to protect the child; or

982 (iv) to remove a weapon in the possession of a child for any of the reasons described in

983 Subsections (7)(c)(i) through (iii). [JR NOTE: unless the Task Force directs otherwise, Will

984 and I suggest that this Subsection (7) also be removed from this newly created section due to

985 fact that these defenses do not apply to child abandonment]

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986 **76-5-110 (Effective 09/01/21). Abuse or neglect of a child with a disability.**

987 (1) (a) As used in this section:

988 ~~[(a)]~~ (i) "Abuse" means:

989 ~~[(i)]~~ (A) inflicting physical injury~~[-as that term is defined in Section 76-5-109];~~

990 ~~[(ii)]~~ (B) having the care or custody of a child with a disability, causing or permitting
991 another to inflict physical injury~~[-as that term is defined in Section 76-5-109];~~ or

992 ~~[(iii)]~~ (C) unreasonable confinement.

993 ~~[(b)]~~ (ii) "Caretaker" means:

994 ~~[(i)]~~ (A) any parent, legal guardian, or other person having under that person's care
995 and custody a child with a disability; or

996 ~~[(ii)]~~ (B) any person, corporation, or public institution that has assumed by contract or
997 court order the responsibility to provide food, shelter, clothing, medical, and other necessities
998 to a child with a disability.

999 ~~[(c)]~~ (iii) "Child with a disability" means ~~[any person]~~ an individual under 18 years
1000 old who is impaired because of mental illness, mental deficiency, physical illness or disability,
1001 or other cause, to the extent that the ~~[person]~~ individual is unable to care for the ~~[person's]~~
1002 individual's own personal safety or to provide necessities such as food, shelter, clothing, and
1003 medical care.

1004 ~~[(d)]~~ (iv) "Neglect" means failure by a caretaker to provide care, nutrition, clothing,
1005 shelter, supervision, or medical care.

1006 (v) "Physical injury" means the same as that term is defined in Section 76-5-109.

1007 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

1008 (2) ~~[Any caretaker]~~ An actor commits abuse or neglect of a child with a disability if
1009 the actor is a caretaker and ~~[who]~~ intentionally, knowingly, or recklessly abuses or neglects a
1010 child with a disability~~[-is guilty of a third degree felony].~~

1011 (3) A violation of Subsection (2) is a third degree felony.

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1012 ~~[(3)]~~ (4) (a) A parent or legal guardian who provides a child with treatment by
1013 spiritual means alone through prayer, in lieu of medical treatment, in accordance with the
1014 tenets and practices of an established church or religious denomination of which the parent
1015 or legal guardian is a member or adherent ~~[shall]~~ may not, for that reason alone, be
1016 considered to be in violation under this section.

1017 (b) Subject to Section 80-3-109, the exception under Subsection ~~[(3)]~~ (4) (a) does not
1018 preclude a court from ordering medical services from a physician licensed to engage in the
1019 practice of medicine to be provided to the child where there is substantial risk of harm to the
1020 child's health or welfare if the treatment is not provided.

1021 (c) A caretaker of a child with a disability does not violate this section by selecting a
1022 treatment option for a medical condition of a child with a disability, if the treatment option is
1023 one that a reasonable caretaker would believe to be in the best interest of the child with a
1024 disability.

1025 **76-5-111. Abuse~~[, neglect, or exploitation]~~ of a vulnerable adult -- Penalties. [JR**

1026 **NOTE: This statute was broken up into several offense statutes that follow this one; Will and**
1027 **Steve agree with this action]**

1028 (1) (a) As used in this section:

1029 ~~[(a)]~~ (i) "Abandonment" means a knowing or intentional action or inaction, including
1030 desertion, by a person acting as a caretaker for a vulnerable adult that leaves the vulnerable
1031 adult without the means or ability to obtain necessary food, clothing, shelter, or medical or
1032 other health care.

1033 ~~[(b)]~~ (ii) "Abuse" means:

1034 ~~[(i)]~~ (A) attempting to cause harm, intentionally or knowingly causing harm, or
1035 intentionally or knowingly placing another in fear of imminent harm;

1036 ~~[(ii)]~~ (B) causing physical injury by knowing or intentional acts or omissions;

1037 ~~[(iii)]~~ (C) unreasonable or inappropriate use of physical restraint, medication, or
1038 isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a

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1039 physician's orders or used as an unauthorized substitute for treatment, unless that conduct
1040 furthers the health and safety of the vulnerable adult; or

1041 ~~[(iv)]~~ (D) deprivation of life-sustaining treatment, except:

1042 ~~[(A)]~~ (I) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

1043 ~~[(B)]~~ (II) when informed consent, as defined in this section, has been obtained.

1044 ~~[(c)] "Business relationship" means a relationship between two or more individuals or~~
1045 ~~entities where there exists an oral or written agreement for the exchange of goods or~~
1046 ~~services.]~~

1047 ~~[(d)]~~ (iii) "Caretaker" means a person or public institution that is entrusted with or
1048 assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing,
1049 supervision, medical or other health care, or other necessities for pecuniary gain, by contract,
1050 or as a result of friendship, or in a position of trust and confidence with a vulnerable adult,
1051 including a relative, a household member, an attorney-in-fact, a neighbor, a person who is
1052 employed or who provides volunteer work, a court-appointed or voluntary guardian, or a
1053 person who contracts or is under court order to provide care.

1054 ~~[(e)] "Deception" means:~~

1055 ~~—— (i) a misrepresentation or concealment:~~

1056 ~~—— (A) of a material fact relating to services rendered, disposition of property, or use of~~
1057 ~~property intended to benefit a vulnerable adult;~~

1058 ~~—— (B) of the terms of a contract or agreement entered into with a vulnerable adult; or~~

1059 ~~—— (C) relating to the existing or preexisting condition of any property involved in a~~
1060 ~~contract or agreement entered into with a vulnerable adult; or~~

1061 ~~—— (ii) the use or employment of any misrepresentation, false pretense, or false promise~~
1062 ~~in order to induce, encourage, or solicit a vulnerable adult to enter into a contract or~~
1063 ~~agreement.]~~

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1064 ~~[(f)-(i)]~~ (iv) (A) "Dependent adult" means an individual 18 years old or older, who has
1065 a physical or mental impairment that restricts the individual's ability to carry out normal
1066 activities or to protect the individual's rights.

1067 ~~[(ii)]~~ (B) "Dependent adult" includes an individual who has physical or developmental
1068 disabilities or whose physical or mental capacity has substantially diminished because of
1069 age.

1070 ~~[(g)]~~ (v) "Elder adult" means an individual 65 years old or older.

1071 ~~[(h)]~~ "Endeavor" means to attempt or try.]

1072 ~~[(i)]~~ (vi) "Exploitation" means an offense described in ~~[Subsection (4) or (9) or~~
1073 ~~Section]~~ Section 76-5-111.2, 76-5-111.3, or 76-5b-202.

1074 ~~[(j)]~~ (vii) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
1075 psychological damage, physical injury, suffering, or distress inflicted knowingly or
1076 intentionally.

1077 ~~[(k)]~~ (viii) "Informed consent" means:

1078 ~~[(i)]~~ (A) a written expression by the individual or authorized by the individual, stating
1079 that the individual fully understands the potential risks and benefits of the withdrawal of food,
1080 water, medication, medical services, shelter, cooling, heating, or other services necessary to
1081 maintain minimum physical or mental health, and that the individual desires that the services
1082 be withdrawn, except that a written expression is valid only if the individual is of sound mind
1083 when the consent is given, and the consent is witnessed by at least two individuals who do
1084 not benefit from the withdrawal of services; or

1085 ~~[(ii)]~~ (B) consent to withdraw food, water, medication, medical services, shelter,
1086 cooling, heating, or other services necessary to maintain minimum physical or mental health,
1087 as permitted by court order.

1088 ~~[—(l)]~~ "Intimidation" means communication conveyed through verbal or nonverbal
1089 conduct which threatens deprivation of money, food, clothing, medicine, shelter, social
1090 interaction, supervision, health care, or companionship, or which threatens isolation or harm.]

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1091 ~~[(m)(i)]~~ ~~(ix)~~ (A) "Isolation" means knowingly or intentionally preventing a vulnerable
1092 adult from having contact with another person, unless the restriction of personal rights is
1093 authorized by court order, by:

1094 ~~[(A)]~~ (I) preventing the vulnerable adult from communicating, visiting, interacting, or
1095 initiating interaction with others, including receiving or inviting visitors, mail, or telephone
1096 calls, contrary to the express wishes of the vulnerable adult, or communicating to a visitor
1097 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,
1098 knowing that communication to be false;

1099 ~~[(B)]~~ (II) physically restraining the vulnerable adult in order to prevent the vulnerable
1100 adult from meeting with a visitor; or

1101 ~~[(E)]~~ (III) making false or misleading statements to the vulnerable adult in order to
1102 induce the vulnerable adult to refuse to receive communication from visitors or other family
1103 members.

1104 ~~[(ii)]~~ (B) "Isolation" does not include an act:

1105 ~~[(A)]~~ (I) intended in good faith to protect the physical or mental welfare of the
1106 vulnerable adult; or

1107 ~~[(B)]~~ (II) performed pursuant to the treatment plan or instructions of a physician or
1108 other professional advisor of the vulnerable adult.

1109 ~~[(n)]~~ ~~"Lacks capacity to consent" means an impairment by reason of mental illness,~~
1110 ~~developmental disability, organic brain disorder, physical illness or disability, chronic use of~~
1111 ~~drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a~~
1112 ~~vulnerable adult lacks sufficient understanding of the nature or consequences of decisions~~
1113 ~~concerning the adult's person or property.]~~

1114 ~~[(o)]~~ (x) "Neglect" means:

1115 ~~[(f)]~~ (A) failure of a caretaker to provide nutrition, clothing, shelter, supervision,
1116 personal care, or dental or other health care, or failure to provide protection from health and
1117 safety hazards or maltreatment;

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1118 ~~[(ii)]~~ (B) failure of a caretaker to provide care to a vulnerable adult in a timely
1119 manner and with the degree of care that a reasonable person in a like position would
1120 exercise;

1121 ~~[(iii)]~~ (C) a pattern of conduct by a caretaker, without the vulnerable adult's informed
1122 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
1123 heating, or other services necessary to maintain the vulnerable adult's well being;

1124 ~~[(iv)]~~ (D) intentional failure by a caretaker to carry out a prescribed treatment plan
1125 that results or could result in physical injury or physical harm; or

1126 ~~[(v)]~~ (E) abandonment by a caretaker.

1127 ~~[(p) (i)]~~ (xi) (A) "Physical injury" includes damage to any bodily tissue caused by
1128 nontherapeutic conduct, to the extent that the tissue must undergo a healing process in order
1129 to be restored to a sound and healthy condition, or damage to any bodily tissue to the extent
1130 that the tissue cannot be restored to a sound and healthy condition.

1131 ~~[(ii)]~~ (B) "Physical injury" includes skin bruising, a dislocation, physical pain, illness,
1132 impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn,
1133 a bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or
1134 any other physical condition that imperils the health or welfare of the vulnerable adult and is
1135 not a serious physical injury as defined in this section.

1136 ~~[(q)]~~ (xii) "Position of trust and confidence" means the position of a person who:

1137 ~~[(i)]~~ (A) is a parent, spouse, adult child, or other relative of a vulnerable adult;

1138 ~~[(ii)]~~ (B) is a joint tenant or tenant in common with a vulnerable adult;

1139 ~~[(iii)]~~ (C) has a legal or fiduciary relationship with a vulnerable adult, including a
1140 court-appointed or voluntary guardian, trustee, attorney, attorney-in-fact, or conservator; or

1141 ~~[(iv)]~~ (D) is a caretaker of a vulnerable adult.

1142 ~~[(r)]~~ (xiii) "Serious physical injury" means any physical injury or set of physical
1143 injuries that:

1144 ~~[(i)]~~ (A) seriously impairs a vulnerable adult's health;

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1145 ~~[(ii)]~~ (B) was caused by use of a dangerous weapon ~~[as defined in Section~~
1146 ~~76-1-604]~~;

1147 ~~[(iii)]~~ (C) involves physical torture or causes serious emotional harm to a vulnerable
1148 adult; or

1149 ~~[(iv)]~~ (D) creates a reasonable risk of death.

1150 ~~[(s)]~~ "Undue influence" occurs when a person:

1151 ~~—— (i) uses influence to take advantage of a vulnerable adult's mental or physical~~
1152 ~~impairment; or~~

1153 ~~—— (ii) uses the person's role, relationship, or power:~~

1154 ~~—— (A) to exploit, or knowingly assist or cause another to exploit, the trust, dependency,~~
1155 ~~or fear of a vulnerable adult; or~~

1156 ~~—— (B) to gain control deceptively over the decision making of the vulnerable adult.]~~

1157 ~~[(t)]~~ (xiv) "Vulnerable adult" means an elder adult, or a dependent adult who has a
1158 mental or physical impairment which substantially affects that individual's ability to:

1159 ~~[(i)]~~ (A) provide personal protection;

1160 ~~[(ii)]~~ (B) provide necessities such as food, shelter, clothing, or medical or other
1161 health care;

1162 ~~[(iii)]~~ (C) obtain services necessary for health, safety, or welfare;

1163 ~~[(iv)]~~ (D) carry out the activities of daily living;

1164 ~~[(v)]~~ (E) manage the adult's own resources; or

1165 ~~[(vi)]~~ (F) comprehend the nature and consequences of remaining in a situation of
1166 abuse, neglect, or exploitation.

1167 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

1168 ~~[(2)] Under any circumstances likely to produce death or serious physical injury, a~~
1169 ~~person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury~~
1170 ~~or, having the care or custody of a vulnerable adult, causes or permits that adult's person or~~

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1171 ~~health to be injured, or causes or permits a vulnerable adult to be placed in a situation where~~
1172 ~~the adult's person or health is endangered, is guilty of the offense of aggravated abuse of a~~
1173 ~~vulnerable adult as follows:~~

1174 ~~—— (a) if done intentionally or knowingly, the offense is a second degree felony;~~

1175 ~~—— (b) if done recklessly, the offense is third degree felony; and~~

1176 ~~—— (c) if done with criminal negligence, the offense is a class A misdemeanor.]~~

1177 ~~[(3)(a) Under]~~ (2) An actor, including a caretaker, commits abuse of a vulnerable
1178 adult if the actor, under circumstances other than those likely to produce death or serious
1179 physical injury~~[, except as provided in Subsection (3)(b), any person, including a caretaker,~~
1180 ~~who] :~~

1181 (a) causes a vulnerable adult to suffer harm, abuse, or neglect~~[, or,]~~ ;

1182 (b) having the care or custody of a vulnerable adult, causes or permits that vulnerable
1183 adult's person or health to be injured, abused, or neglected~~[,]~~ ; or

1184 (c) causes or permits a vulnerable adult to be placed in a situation ~~[where the]~~ in which the
1185 vulnerable adult's person or health is endangered~~[, is guilty of the offense of abuse of a~~
1186 ~~vulnerable adult as follows:]~~ .

1187 (3) (a) A violation of Subsection (2):

1188 (i) is a class A misdemeanor if done intentionally or knowingly~~[, the offense is a class~~
1189 ~~A misdemeanor];~~

1190 (ii) is a class B misdemeanor if done recklessly~~[, the offense is a class B~~
1191 ~~misdemeanor; and]~~; or

1192 (iii) a class C misdemeanor if done with criminal negligence~~[, the offense is a class C~~
1193 ~~misdemeanor]~~.

1194 (b) ~~[A]~~ Notwithstanding Subsection (3)(a), a violation of ~~[this Subsection (3)]~~
1195 Subsection (2) that is based on isolation of a vulnerable adult is a third degree felony.

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1196 ~~[(4) Except as provided in Subsection (5), a caretaker of a vulnerable adult commits~~
1197 ~~the offense of personal dignity exploitation of the vulnerable adult if the caretaker~~
1198 ~~intentionally, knowingly, or recklessly.]~~

1199 ~~[(a) creates, transmits, or displays a photographic or electronic image or recording of~~
1200 ~~the vulnerable adult:~~

1201 ~~—— (i) to which creation, transmission, or display a reasonable person would not consent;~~
1202 ~~and~~

1203 ~~—— (ii) (A) that shows the vulnerable adult's unclothed breasts, buttocks, anus, genitals,~~
1204 ~~or public area;~~

1205 ~~—— (B) that displays the clothed area of only the vulnerable adult's breasts, buttocks,~~
1206 ~~anus, genitals, or pubic area; or~~

1207 ~~—— (C) that shows the vulnerable adult engaged in conduct that is harmful to the mental~~
1208 ~~or physical health or safety of the vulnerable adult; or~~

1209 ~~—— (b) causes the vulnerable adult to participate in an act that is highly offensive or~~
1210 ~~demeaning to the vulnerable adult:~~

1211 ~~—— (i) in which a reasonable person would not participate; or~~

1212 ~~—— (ii) that is harmful to the mental or physical health or safety of the vulnerable adult.~~

1213 ~~—— (5) (a) A caretaker does not violate Subsection (4)(a) if the caretaker creates,~~
1214 ~~transmits, or displays the photographic or electronic image or recording:~~

1215 ~~—— (i) with the consent of the vulnerable adult, if the vulnerable adult:~~

1216 ~~—— (A) is mentally and physically able to give voluntary consent to the creation,~~
1217 ~~transmission, or display; and~~

1218 ~~—— (B) gives voluntary consent for the creation, transmission, or display;~~

1219 ~~—— (ii) for a legitimate purpose relating to monitoring or providing care, treatment, or~~
1220 ~~diagnosis; or~~

1221 ~~—— (iii) for a legitimate purpose relating to investigating abuse, neglect, or exploitation.~~

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- 1222 ~~—— (b) A caretaker does not violate Subsection (4)(b) if:~~
- 1223 ~~—— (i) the vulnerable adult:~~
- 1224 ~~—— (A) is mentally and physically able to give voluntary consent to participate in the act;~~
- 1225 ~~and~~
- 1226 ~~—— (B) gives voluntary consent to participate in the act; or~~
- 1227 ~~—— (ii) the caretaker causes the vulnerable adult to participate in the act for a legitimate~~
- 1228 ~~purpose relating to:~~
- 1229 ~~—— (A) monitoring or providing care, treatment, or diagnosis; or~~
- 1230 ~~—— (B) investigating abuse, neglect, or exploitation.~~
- 1231 ~~—— (6) (a) It is a separate offense under Subsection (4)(a) for each vulnerable adult~~
- 1232 ~~included in a photographic or electronic image or recording created, transmitted, or displayed~~
- 1233 ~~in violation of Subsection (4)(a).~~
- 1234 ~~—— (b) It is a separate offense under Subsection (4)(b) for each vulnerable adult caused~~
- 1235 ~~to participate in an act in violation of Subsection (4)(b).~~
- 1236 ~~—— (7) It is not a defense that the vulnerable adult was unaware of:~~
- 1237 ~~—— (a) the creation, transmission, or display prohibited under Subsection (4)(a); or~~
- 1238 ~~—— (b) participation in the act, or the nature of participation in the act, under Subsection~~
- 1239 ~~(4)(b).~~
- 1240 ~~—— (8) The offense of personal dignity exploitation of a vulnerable adult is:~~
- 1241 ~~—— (a) if done intentionally or knowingly, a class A misdemeanor; and~~
- 1242 ~~—— (b) if done recklessly, a class B misdemeanor.~~
- 1243] ~~[(9) (a) A person commits the offense of financial exploitation of a vulnerable adult~~
- 1244 ~~when the person:~~
- 1245 ~~—— (i) is in a position of trust and confidence, or has a business relationship, with the~~
- 1246 ~~vulnerable adult or has undue influence over the vulnerable adult and knowingly, by~~
- 1247 ~~deception or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable~~

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1248 ~~adult's funds, credit, assets, or other property with the intent to temporarily or permanently~~
1249 ~~deprive the vulnerable adult of the use, benefit, or possession of the adult's property, for the~~
1250 ~~benefit of someone other than the vulnerable adult;~~

1251 ~~—— (ii) knows or should know that the vulnerable adult lacks the capacity to consent, and~~
1252 ~~obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or~~
1253 ~~endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent~~
1254 ~~to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession~~
1255 ~~of the vulnerable adult's property for the benefit of someone other than the vulnerable adult;~~

1256 ~~—— (iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the~~
1257 ~~profit or advantage of someone other than the vulnerable adult;~~

1258 ~~—— (iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship~~
1259 ~~for the profit or advantage of someone other than the vulnerable adult; or~~

1260 ~~—— (v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or~~
1261 ~~furtherance of any criminal activity.~~

1262 ~~—— (b) A person is guilty of the offense of financial exploitation of a vulnerable adult as~~
1263 ~~follows:~~

1264 ~~—— (i) if done intentionally or knowingly and the aggregate value of the resources used or~~
1265 ~~the profit made is or exceeds \$5,000, the offense is a second degree felony;~~

1266 ~~—— (ii) if done intentionally or knowingly and the aggregate value of the resources used or~~
1267 ~~the profit made is less than \$5,000 or cannot be determined, the offense is a third degree~~
1268 ~~felony;~~

1269 ~~—— (iii) if done recklessly, the offense is a class A misdemeanor; or~~

1270 ~~—— (iv) if done with criminal negligence, the offense is a class B misdemeanor.]~~

1271 ~~[(10)-]~~ (4) It does not constitute a defense to a prosecution for ~~[any]~~ a violation of
1272 this section that the ~~[accused]~~ actor did not know the age of the ~~[victim]~~ vulnerable adult.
1273 **[JR NOTE: Replaced "victim" with "vulnerable adult"]**

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1274 ~~[(11)-]~~ (5) An adult is not considered abused, neglected, or a vulnerable adult for the
1275 reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in
1276 lieu of medical care.

1277 ~~[(12)-]~~ (6) If an ~~[individual]~~ actor, including a caretaker, violates this section by
1278 willfully isolating a vulnerable adult, in addition to the penalties under Subsection ~~[(2)-or]~~ (3),
1279 the court may require that the ~~[individual]~~ actor :

1280 (a) undergo appropriate counseling as a condition of the sentence; and

1281 (b) pay for the costs of the ordered counseling.

1282 **76-5-111.1 Aggravated abuse of a vulnerable adult -- Penalties.**

1283 (1) (a) As used in this section, "abuse," "caretaker," "isolation," "neglect", "serious physical
1284 injury," and "vulnerable adult" all mean the same as those terms are defined in Section
1285 76-5-111.

1286 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

1287 (2) An actor, including a caretaker, commits aggravated abuse of a vulnerable adult if the
1288 actor, under a circumstance likely to produce death or serious physical injury:

1289 (a) causes a vulnerable adult to suffer serious physical injury;

1290 (b) having the care or custody of a vulnerable adult, causes or permits the vulnerable adult's
1291 person or health to be injured; or

1292 (c) causes or permits a vulnerable adult to be placed in a situation in which the vulnerable
1293 adult's person or health is endangered.

1294 (3) (a) A violation of Subsection (2) is a second degree felony if done intentionally or
1295 knowingly.

1296 (b) A violation of Subsection (2) is a third degree felony if done recklessly.

1297 (c) A violation of Subsection (2) is a class A misdemeanor if done with criminal negligence.

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1298 (4) It does not constitute a defense to a prosecution for a violation of this section that the
1299 actor did not know the age of the vulnerable adult. [JR note: "victim" replaced with
1300 "vulnerable adult"]

1301 (5) An adult is not considered abused, neglected, or a vulnerable adult for the reason that
1302 the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of
1303 medical care.

1304 (6) If an actor, including a caretaker, violates this section by willfully isolating a vulnerable
1305 adult, in addition to the penalties under Subsection (3), the court may require that the actor:

1306 (a) undergo appropriate counseling as a condition of the sentence; and

1307 (b) pay for the costs of the ordered counseling.

1308 **76-5-111.2 Personal dignity exploitation of a vulnerable adult -- Penalties.**

1309 (1) (a) As used in this section, "abuse," "caretaker," "exploitation," "neglect, and "vulnerable
1310 adult" all mean the same as those terms are defined in Section 76-5-111.

1311 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

1312 (2) Except as provided in Subsection (4), an actor commits personal dignity exploitation of a
1313 vulnerable adult if the actor is a caretaker of a vulnerable adult and intentionally, knowingly,
1314 or recklessly:

1315 (a) creates, transmits, or displays a photographic or electronic image or recording of the
1316 vulnerable adult:

1317 (i) to which creation, transmission, or display a reasonable person would not consent; and

1318 (ii) (A) that shows the vulnerable adult's unclothed breasts, buttocks, anus, genitals, or
1319 public area;

1320 (B) that displays the clothed area of only the vulnerable adult's breasts, buttocks, anus,
1321 genitals, or public area; or

1322 (C) that shows the vulnerable adult engaged in conduct that is harmful to the mental or
1323 physical health or safety of the vulnerable adult; or

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- 1324 (b) causes the vulnerable adult to participate in an act that is highly offensive or demeaning
1325 to the vulnerable adult:
- 1326 (i) in which a reasonable person would not participate; or
1327 (ii) that is harmful to the mental or physical health or safety of the vulnerable adult.
- 1328 (3) (a) A violation of Subsection (2) is a class A misdemeanor if done intentionally or
1329 knowingly.
- 1330 (b) A violation of Subsection (2) is a class B misdemeanor if done recklessly.
- 1331 (4) (a) A caretaker does not violate Subsection (2)(a) if the caretaker creates, transmits, or
1332 displays the photographic or electronic image or recording:
- 1333 (i) with the consent of the vulnerable adult, if the vulnerable adult:
- 1334 (A) is mentally and physically able to give voluntary consent to the creation, transmission, or
1335 display; and
- 1336 (B) gives voluntary consent for the creation, transmission, or display;
- 1337 (ii) for a legitimate purpose relating to monitoring or providing care, treatment, or diagnosis;
1338 or
- 1339 (iii) for a legitimate purpose relating to investigating abuse, neglect, or exploitation.
- 1340 (b) A caretaker does not violate Subsection (2)(b) if:
- 1341 (i) the vulnerable adult:
- 1342 (A) is mentally and physically able to give voluntary consent to participate in the act; and
1343 (B) gives voluntary consent to participate in the act; or
- 1344 (ii) the caretaker causes the vulnerable adult to participate in the act for a legitimate purpose
1345 relating to:
- 1346 (A) monitoring or providing care, treatment, or diagnosis; or
1347 (B) investigating abuse, neglect, or exploitation.

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1348 (5) (a) It is a separate offense under Subsection (2)(a) for each vulnerable adult included in
1349 a photographic or electronic image or recording created, transmitted, or displayed in violation
1350 of Subsection (2)(a).

1351 (b) It is a separate offense under Subsection (2)(b) for each vulnerable adult caused to
1352 participate in an act in violation of Subsection (2)(b).

1353 (6) It is not a defense that the vulnerable adult was unaware of:

1354 (a) the creation, transmission, or display prohibited under Subsection (2)(a); or

1355 (b) participation in the act, or the nature of participation in the act, under Subsection (2)(b).

1356 (7) It does not constitute a defense to a prosecution for a violation of this section that the
1357 actor did not know the age of the vulnerable adult. [JR NOTE: replaced "victim" with
1358 "vulnerable adult" here]

1359 (8) An adult is not considered abused, neglected, or a vulnerable adult for the reason that
1360 the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of
1361 medical care. {JR NOTE: unless the Task Force directs otherwise, I recommend deleting this
1362 provision from this offense because it doesn't appear to belong; Will and Steve agree with
1363 recommendation}

1364 **76-5-111.3 Financial exploitation of a vulnerable adult -- Penalties.**

1365 (1) (a) As used in this section:

1366 (i) "Abuse" means the same as that term is defined in Section 76-5-111.

1367 (ii) "Business relationship" means a relationship between two or more individuals or entities
1368 where there exists an oral or written agreement for the exchange of goods or services.

1369 (iii) "Deception" means:

1370 (A) a misrepresentation or concealment:

1371 (I) of a material fact relating to services rendered, disposition of property, or use of property
1372 intended to benefit a vulnerable adult;

1373 (II) of the terms of a contract or agreement entered into with a vulnerable adult; or

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- 1374 (III) relating to the existing or preexisting condition of any property involved in a contract or
1375 agreement entered into with a vulnerable adult; or
- 1376 (B) the use or employment of any misrepresentation, false pretense, or false promise in
1377 order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.
- 1378 (iv) "Endeavor" means to attempt or try.
- 1379 (v) "Isolation" means the same as that term is defined in Section 76-5-111.
- 1380 (vi) "Intimidation" means communication conveyed through verbal or nonverbal conduct that
1381 threatens deprivation of money, food, clothing, medicine, shelter, social interaction,
1382 supervision, health care, or companionship, or that threatens isolation or harm.
- 1383 (vii) "Lacks capacity to consent" means an impairment by reason of mental illness,
1384 developmental disability, organic brain disorder, physical illness or disability, chronic use of
1385 drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a
1386 vulnerable adult lacks sufficient understanding of the nature or consequences of decisions
1387 concerning the vulnerable adult's person or property.
- 1388 (viii) "Neglect" means the same as that term is defined in Section 76-5-111.
- 1389 (ix) "Undue influence" occurs when a person:
- 1390 (A) uses influence to take advantage of a vulnerable adult's mental or physical impairment;
1391 or
- 1392 (B) uses the person's role, relationship, or power:
- 1393 (I) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of
1394 a vulnerable adult; or
- 1395 (II) to gain control deceptively over the decision making of the vulnerable adult.
- 1396 (x) "Vulnerable adult" means the same as that term is defined in Section 76-5-111.
- 1397 (b) Definitions of terms in Section 76-1-101.5 apply to this section.
- 1398 (2) An actor commits the offense of financial exploitation of a vulnerable adult if the actor:

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1399 (a) is in a position of trust and confidence, or has a business relationship, with the vulnerable
1400 adult or has undue influence over the vulnerable adult and knowingly, by deception or
1401 intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds,
1402 credit, assets, or other property with the intent to temporarily or permanently deprive the
1403 vulnerable adult of the use, benefit, or possession of the vulnerable adult's property, for the
1404 benefit of someone other than the vulnerable adult;

1405 (b) knows or should know that the vulnerable adult lacks the capacity to consent, and
1406 obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or
1407 endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent
1408 to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession
1409 of the vulnerable adult's property for the benefit of someone other than the vulnerable adult;

1410 (c) unjustly or improperly uses or manages the resources of a vulnerable adult for the profit
1411 or advantage of someone other than the vulnerable adult;

1412 (d) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship for the
1413 profit or advantage of someone other than the vulnerable adult; or

1414 (e) involves a vulnerable adult who lacks the capacity to consent in the facilitation or
1415 furtherance of any criminal activity.

1416 (3) (a) A violation of Subsection (2) is a second degree felony if done intentionally or
1417 knowingly and the aggregate value of the resources used or the profit made is or exceeds
1418 \$5,000.

1419 (b) A violation of Subsection (2) is a third degree felony if done intentionally or knowingly and
1420 the aggregate value of the resources used or the profit made is less than \$5,000 or cannot
1421 be determined.

1422 (c) A violation of Subsection (2) is a class A misdemeanor if done recklessly.

1423 (d) A violation of Subsection (2) is a class B misdemeanor if done with criminal negligence.

1424 (4) It does not constitute a defense to a prosecution for a violation of this section that the
1425 actor did not know the age of the vulnerable adult. [JR NOTE: replaced "victim" with
1426 "vulnerable adult" here]

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1427 (5) An adult is not considered abused, neglected, or a vulnerable adult for the reason that
1428 the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of
1429 medical care. {JR NOTE: unless the Task Force directs otherwise, I recommend deleting this
1430 provision from this offense because it doesn't appear to belong; Will and Steve agree with
1431 recommendation}

1432

1433 **76-5-112. Reckless endangerment -- Penalty.**

1434 (1) Definitions of terms in Section 76-1-101.5 apply to this section.

1435 ~~[(1) A person]~~ (2) An actor commits reckless endangerment if, under circumstances
1436 not amounting to a felony offense, the ~~[person]~~ actor recklessly engages in conduct that
1437 creates a substantial risk of death or serious bodily injury to another person.

1438 ~~[(2) Reckless endangerment]~~ (3) A violation of Subsection (2) is a class A
1439 misdemeanor.

1440

1441 **76-5-112.5. Endangerment of a child or vulnerable adult.**

1442 (1) (a) As used in this section:

1443 ~~[(a) (i)]~~ (i) (A) "Chemical substance" means:

1444 ~~[(A)]~~ (I) a substance intended to be used as a precursor in the manufacture of a
1445 controlled substance;

1446 ~~[(B)]~~ (II) a substance intended to be used in the manufacture of a controlled
1447 substance; or

1448 ~~[(C)]~~ (III) any fumes or by-product resulting from the manufacture of a controlled
1449 substance.

1450 ~~[(ii)]~~ (B) Intent under this Subsection (1)(a) (i) may be demonstrated by:

1451 ~~[(A)]~~ (I) the use, quantity, or manner of storage of the substance; or

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1452 ~~[(B)]~~ (II) the proximity of the substance to other precursors or to manufacturing
1453 equipment.

1454 ~~[(b)]~~ (ii) "Child" means an individual who is under 18 years ~~[of age]~~ old.

1455 ~~[(c)]~~ (iii) "Controlled substance" means the same as that term is defined in Section
1456 58-37-2.

1457 ~~[(d)]~~ (iv) "Drug paraphernalia" means the same as that term is defined in Section
1458 58-37a-3.

1459 ~~[(e)]~~ (v) "Exposed to" means that the child or vulnerable adult:

1460 ~~[(f)]~~ (A) is able to access an unlawfully possessed:

1461 ~~[(A)]~~ (I) controlled substance; or

1462 ~~[(B)]~~ (II) chemical substance;

1463 ~~[(f)]~~ (B) has the reasonable capacity to access drug paraphernalia; or

1464 ~~[(f)]~~ (C) is able to smell an odor produced during, or as a result of, the manufacture
1465 or production of a controlled substance.

1466 ~~[(f)]~~ (vi) "Prescription" means the same as that term is defined in Section 58-37-2.

1467 ~~[(g)]~~ (vii) "Vulnerable adult" means the same as that term is defined in Subsection
1468 76-5-111~~[(f)]~~.

1469 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

1470 ~~[(2) Unless a greater penalty is otherwise provided by law:~~

1471 ~~— (a) except as provided in Subsections (2)(b), (c), and (3), an individual is guilty of a~~
1472 ~~felony of the third degree if the individual]~~ (2) An actor commits endangerment of a child or
1473 vulnerable adult if the actor knowingly or intentionally causes or permits a child or a
1474 vulnerable adult to be exposed to, inhale, ingest, or have contact with a controlled substance,
1475 chemical substance, or drug paraphernalia~~[(f)]~~.

1476 (3) (a) A violation of Subsection (2) is a third degree felony.

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1477 (b) ~~[except as provided in Subsection (2)(c) and (3), an individual is guilty of a felony~~
1478 ~~of the second degree;]~~ Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a
1479 second degree felony if:

1480 (i) the ~~[individual]~~ actor engages in the conduct described in Subsection (2)~~[(a)]~~; and

1481 (ii) as a result of the conduct described in Subsection (2)~~[(a)]~~, the child or the
1482 vulnerable adult suffers bodily injury, substantial bodily injury, or serious bodily injury~~[-or]~~ .

1483 (c) ~~[an individual is guilty of a felony of the first degree;]~~ Notwithstanding Subsections
1484 (3)(a) and (b), a violation of Subsection (2) is a first degree felony if:

1485 (i) the ~~[individual]~~ actor engages in the conduct described in Subsection (2)~~[(a)]~~; and

1486 (ii) as a result of the conduct described in Subsection (2)~~[(a)]~~, the child or the
1487 vulnerable adult dies.

1488 ~~[(3) Notwithstanding Subsection (2), a]~~ (4) Notwithstanding Subsection (3), a child
1489 may not be subjected to delinquency proceedings for a violation of Subsection (2) unless:

1490 (a) the child is 15 years old or older; and

1491 (b) the other child who is exposed to or inhales, ingests, or has contact with the
1492 controlled substance, chemical substance, or drug paraphernalia, is under 12 years old.

1493 ~~[(4)]~~ (5) It is an affirmative defense to a violation of this section that the controlled
1494 substance:

1495 (a) was obtained by lawful prescription or in accordance with Title 26, Chapter 61a,
1496 Utah Medical Cannabis Act; and

1497 (b) is used or possessed by the individual to whom the controlled substance was
1498 lawfully prescribed or recommended to under Title 26, Chapter 61a, Utah Medical Cannabis
1499 Act.

1500 ~~[(5)]~~ (6) The penalties described in this section are separate from, and in addition
1501 to, the penalties and enhancements described in Title 58, Occupations and Professions.

1502 (7) If an offense committed under this section amounts to an offense subject to a greater
1503 penalty under another provision of state law, this section does not prohibit prosecution and

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1504 sentencing for the more serious offense. [JR NOTE: Subsection (7) added due to removal of
1505 language at beginning of Subsection (2) that stated: "Unless a greater penalty is otherwise
1506 provided by law"]

1507

1508 **76-5-113. Surreptitious administration of certain substances -- Definitions -- Penalties**
1509 **-- Defenses.**

1510 (1) (a) As used in this section:

1511 ~~[(a)]~~ (i) "Administer" means the introduction of a substance into the body by
1512 injection, inhalation, ingestion, or by any other means.

1513 ~~[(b)]~~ (ii) "Alcoholic beverage" ~~[has the same meaning as "alcoholic beverage"]~~
1514 means the same as that term is defined in Section 32B-1-102.

1515 ~~[(c)]~~ "Bodily injury" has the same definition as in Section 76-1-601.]

1516 ~~[(d)]~~ (iii) "Controlled substance" ~~[has the same definition as in]~~ means the same
1517 as that term is defined in Section 58-37-2.

1518 ~~[(e)]~~ (iv) "Deleterious substance" means a substance which, if administered,
1519 would likely cause bodily injury.

1520 (v) "Health care provider" means the same as that term is defined in Section 26-23a-1.

1521 ~~[(f)]~~ (vi) "Poisonous" means a substance which, if administered, would likely
1522 cause serious bodily injury or death.

1523 ~~[(g)]~~ (vii) "Prescription drug" ~~[has the same definition as]~~ means the same as that
1524 term is defined in Section 58-17b-102.

1525 ~~[(h)]~~ (viii) "Serious bodily injury" ~~[has the same definition as]~~ means the same as
1526 that term is defined in Section 19-2-115.

1527 ~~[(i)]~~ (ix) "Substance" means a controlled substance, poisonous substance, or
1528 deleterious substance ~~[as defined in this Subsection (1)].~~

1529 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

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- 1530 (2) ~~[In addition to any other offense the actor's conduct may constitute, it is a criminal~~
1531 ~~offense for a person,]~~ An actor commits surreptitious administration of a certain
1532 substance if the actor surreptitiously or by means of fraud, deception, or
1533 misrepresentation, ~~[to cause another person]~~ causes an individual to unknowingly
1534 consume or receive the administration of:
- 1535 (a) any poisonous, deleterious, or controlled substance; or
- 1536 (b) any alcoholic beverage.
- 1537 (3) A violation of Subsection (2) is:
- 1538 (a) a second degree felony if the substance is a poisonous substance, regardless
1539 of whether the substance is a controlled substance or a prescription drug;
- 1540 (b) a third degree felony if the substance is not within the scope of Subsection
1541 (3)(a), and is a controlled substance or a prescription drug; ~~[and]~~ or
- 1542 (c) a class A misdemeanor if the substance is a deleterious substance or an
1543 alcoholic beverage.
- 1544 (4) (a) It is an affirmative defense to a prosecution under Subsection (2) that the actor:
- 1545 (i) provided the appropriate administration of a prescription drug; and
- 1546 (ii) acted on the reasonable belief that the actor's conduct was in the best
1547 interest of the well-being of the ~~[person]~~ individual to whom the
1548 prescription drug was administered.
- 1549 (b) (i) The defendant shall file and serve on the prosecuting attorney a notice in
1550 writing of the defendant's intention to claim a defense under Subsection
1551 (4)(a) not fewer than 20 days before the trial.
- 1552 (ii) The notice shall specifically identify the factual basis for the defense and
1553 the names and addresses of the witnesses the defendant proposes to
1554 examine to establish the defense.
- 1555 (c) (i) The prosecuting attorney shall file and serve the defendant with a notice
1556 containing the names and addresses of the witnesses the prosecutor proposes

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to examine in order to contradict or rebut the defendant's claim of an affirmative defense under Subsection (4)(a).

(ii) This notice shall be filed or served not more than 10 days after receipt of the defendant's notice under Subsection (4)(b), or at another time as the court may direct.

(d) (i) Failure of a party to comply with the requirements of Subsection (4)(b) or (4)(c) entitles the opposing party to a continuance to allow for preparation.

(ii) If the court finds that a party's failure to comply is the result of bad faith, it may impose appropriate sanctions.

(5) This section does not diminish the scope of authorized health care by a health care provider ~~[as defined in Section 26-23a-1]~~.

(6) Conduct in violation of Subsection (2) may also constitute a separate offense.

{JR NOTE: Subsection (6) added due to removal of language at beginning of Subsection (2): "In addition to any other offense the actor's conduct may constitute..."}

~~[76-5-109.1.]~~ **76-5-114** **Commission of domestic violence in the presence of a child.**
[Renumbered and amended]

(1) (a) As used in this section:

~~[(a)]~~ (i) "Cohabitant" ~~[has the same meaning as]~~ means the same as that term is defined in Section 78B-7-102.

~~[(b)]~~ (ii) "Criminal homicide" means an offense listed in Subsection 76-5-201(2).

(iii) "Domestic violence" ~~[has the same meaning as]~~ means the same as that term is defined in Section 77-36-1.

~~[(c)]~~ (iv) "In the presence of a child" means:

~~[(f)]~~ (A) in the physical presence of a child; or

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1582 ~~[(f)]~~ (B) having knowledge that a child is present and may see or hear an act of
1583 domestic violence.

1584 (b) Definitions of terms in Section 76-1-101.5 apply to this section.

1585 (2) ~~[A person]~~ An actor commits domestic violence in the presence of a child if the
1586 ~~[person]~~ actor :

1587 (a) commits or attempts to commit criminal homicide~~[, as defined in Section~~
1588 ~~76-5-201,]~~ against a cohabitant in the presence of a child; or

1589 (b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous
1590 weapon~~[, as defined in Section 76-1-601,]~~ or other means or force likely to produce death or
1591 serious bodily injury against a cohabitant, in the presence of a child; or

1592 (c) under circumstances not amounting to a violation of Subsection (2)(a) or (b),
1593 commits an act of domestic violence in the presence of a child.

1594 (3) (a) ~~[A person who violates]~~ A violation of Subsection (2)(a) or (b) is ~~[guilty of]~~ a
1595 third degree felony.

1596 (b) ~~[A person who violates]~~ A violation of Subsection (2)(c) is ~~[guilty of]~~ a class B
1597 misdemeanor.

1598 (4) (a) A charge under this section is separate and distinct from, and is in addition to,
1599 a charge of domestic violence ~~[where]~~ in which the ~~[victim]~~ individual harmed is the
1600 cohabitant. **[JR NOTE: "victim" changed to "individual harmed"]**

1601 (b) Either or both charges may be filed by the prosecutor.

1602 (5) ~~[A person]~~ An actor who commits a violation of this section when more than one
1603 child is present is guilty of one offense of domestic violence in the presence of a child
1604 regarding each child present when the violation occurred.

1605